SUGGESTED ANSWERS

PROFESSIONAL PROGRAMME

INTERNATIONAL BUSINESS – LAWS & PRACTICES

(PP-IBL&P/2013)

(ELECTIVE 9.5)

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
Phones : 41504444, 45341000; *Fax* : 011-24626727
E-mail : info@icsi.edu; *Website* : www.icsi.edu

SUGGESTED ANSWERS

PROFESSIONAL PROGRAMME

INTERNATIONAL BUSINESS – LAWS & PRACTICES
(PP-IBL&P/2013)
(ELECTIVE 9.5)

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

PROFESSIONAL PROGRAMME

INTERNATIONAL BUSINESS – LAWS & PRACTICES

PP-IBL&P/2013

SUGGESTED ANSWERS

CONTENTS

Sl.No. *Page*

TEST PAPER 3/2013

Price : Rs. 40.00 *(Excluding Postage & Packing)*
Rs. 70.00 *(By Registered Post)*

Printed at Samrat Offset Works/300/February 2014

PROFESSIONAL PROGRAMME

INTERNATIONAL BUSINESS – LAWS AND PRACTICES

TEST PAPER 1/2013

Time allowed : 3 hours *Max. Marks : 100*

NOTE *: Answer ALL Questions.*

Question No. 1

You are a company secretary of ABC Exports Ltd. The company is newly formed. Before starting its textile export business, the company needs to obtain Importer Exporter Code Number. The company asks you to obtain the IEC number. Explain in detail the process that will be followed by you in obtaining the IEC number for the company. *(10 marks)*

Answer to Question No. 1

IEC Code is unique 10 digit code issued by the Director General of Foreign Trade (DGFT), Ministry of Commerce to Indian Companies. Before doing the business of import or export in India, IEC Code is mandatory.

- An application for grant of IEC number shall be made by the Registered/Head Office of the ABC Exports Limited in "Aayaat Niryaat" Form - ANF2A and the same would be applied to the nearest Regional Authority of DGFT as per the territorial jurisdiction of the Regional authorities indicated in Policy and Handbook of Procedure Volume-I.
- Along with IEC Code Number Application Form it is necessary to submit Appendix-18B attested by the Banker in his letter head with two passport size photo.
- Application Fee of Rs. 250 will be payable in favour of "Zonal Joint Director General of Foreign Trade" through bank order or demand draft or EFT (Electronic Fund Transfer by Nominated Bank by DGFT Like HDFC Bank, ICICI Bank, State Bank of India, UTI Bank, Punjab National Bank, Central Bank etc).
- The application fee can also be deposited by TR6 Challan with Duplicate Copy in any branch of Central Bank of India and TR6 Challan need to be submitted along with IEC Code Application.
- Application can be filed online in DGFT website. In case of manual applications, the applicant can furnish a soft copy of the application in MS word format.
- Along with the application form, ABC Exports Ltd. shall be required to file exporter profile once with the Regional Authority in Part 1 of 'Aayaat Niryaat Form ANF-

2A'. Regional Authority shall enter the information furnished in Part 1 of 'Aayaat Niryaat Form ANF-2A' in their database. In case of any change in the information given in Part 1 of 'Aayaat Niryaat Form ANF-2A', importer/exporter shall intimate the same to the Regional Authority.

- Application can be submitted in person/by authorised employee of the company at the office or it can be sent by post/courier.
- The applicant shall furnish a self addressed envelope of 40 x 15 cm with postal stamp affixed on the envelope as follows for all documents required to be sent by Speed Post:

– Within local area	Rs. 25.00
– Up to 200 Kms.	Rs. 25.00
– Between 200 to 1000 Kms	Rs. 30.00
– Beyond 1000 Kms.	Rs. 50.00

- An acknowledgement in form of a receipt having File Number is generated on receipt of application. If the application is found complete in all aspects an IEC is generated, or else a deficiency letter stating the nature of deficiency is prepared and sent to the applicant through post at the registered office mentioned by the applicant in the application.
- Replies are awaited in cases where deficiency letter is issued and after due compliance by the applicant the IEC is allotted.
- Mandatory requirements to apply for IEC Number:

(i) Two copies of the application in prescribed format (Aayaat Niryaat Form ANF 2A) must be submitted to your regional Jt.DGFT Office.

(ii) Each individual page of the application has to be signed by the applicant.

(iii) Part 1 & Part 4 has to be filled in by all applicants. In case of applications submitted electronically.

(iv) No hard copies of Part 1 may be submitted. However in cases where applications are submitted otherwise, hard copy of Part 1has to be submitted.

(v) Only relevant portions of Part 2 need to be filled in.

(vi) Rs. 250.00 Bank Receipt (in duplicate)/Demand Draft/EFT details evidencing payment of application fee in terms of Appendix 21B.

(vii) Certificate from the Banker of the applicant firm in the format given in Appendix 18A.

(viii) Self certified copy of PAN issuing letter or PAN (Permanent Account Number) Card issued by Income Tax Authority.

(ix) Two copies of passport size photographs of the applicant duly attested by the Banker of the applicant.

(x) In case of Proprietorship firms, please furnish
- Date of Birth of individual
- Number of IECs held along with their details.

(xi) In case of Companies, please furnish
- Extract of Board of Resolution.
- MOA with Form 32 and ROC in case of change in Directors.

(xii) In case of others
- Notorised Partnership Deed showing date of formation.
- No Objection Certificate from other partners/HUF.

(xiii) Self addresses envelope with Rs.25/- postal stamp for delivery of IEC certificate by registered post or challan/DD of Rs.100/- for speed post.

(xiv) The applicant can know the status of the IEC application using option “Status of IEC Application” on the website http://dgft.delhi.nic.in:8100/dgft/iecprint.

Question No. 2

Explain various modes of entry in international business. *(10 marks)*

Answer to Question No. 2

In today’s globalised world, most of the companies want to enter international market to expand their business. The various modes of international entry are given below.

(a) *Exporting* : Exporting is the easiest and most widely used mode of entering in international markets. Exporters can be classified in various ways. Exporting includes indirect exporting, direct exporting and intra-corporate transfers. Some of the factors to be considered by a company while exporting are:
- Government policies like export policies, import policies, export financing, foreign exchange.
- Marketing factors like image, distribution networks, responsiveness to the customer, customer awareness and customer preferences.
- Location consideration: These factors include physical distribution costs, warehousing costs, transportation costs, inventory carrying costs etc.

(b) *Licensing* : It is the method of foreign operation whereby a firm in one country agrees to permit a company in another country to use the manufacturing, processing, trademark, know-how or some other skill provided by the licensor. Coca Cola is an excellent example of licensing.

(c) *Franchising* : Franchising refers to the methods of practicing and using another person's business philosophy. The franchisor grants the independent operator the right to distribute its products, techniques, and trademarks for a percentage of gross monthly sales and a royalty fee. A business for which franchising is said to work best have the following characteristics:
- Businesses with a good track record of profitability.
- Businesses built around a unique or unusual concept.
- Businesses with broad geographic appeal.

- Businesses which are relatively easy to operate.
- Businesses which are relatively inexpensive to operate.
- Businesses which are easily duplicated.

(d) *Special Modes* : These have special strategies and include:

(i) *Turnkey Projects* : Turn-key refers to something that is ready for immediate use, generally used in the sale or supply of goods or services. The term is common in the construction industry, for instance, in which it refers to the bundling of materials and labour by sub-contractors. A "turnkey" job by a plumber would include the parts (toilets, tub, faucets, pipes, etc.) as well as the plumber's labour, without any contribution by the general contractors.

(ii) *Management Contracts* : A management contract is an arrangement under which operational control of an enterprise is vested by contract in a separate enterprise which performs the necessary managerial functions in return for a fee. A management contract can involve a wide range of functions, such as technical operation of a production facility, management of personnel, accounting, marketing services and training.

(iii) *Contract Manufacturing* : Contract manufacturing is a process that established a working agreement between two companies. As part of the agreement, one company will produce parts or other materials on behalf of their client. In most cases, the manufacturer will also handle the ordering and shipment processes for the client. As a result, the client does not have to maintain manufacturing facilities, purchase raw materials, or hire labor in order to produce the finished goods.

(e) *Foreign Direct Investment without alliances/ Greenfield Investment* : A form of foreign direct investment where a parent company starts a new venture in a foreign country by constructing new operational facilities from the ground up is called Greenfield Investment. Green field investments occur when multinational corporations enter into developing countries to build new factories and/or stores.

(f) *Foreign Direct Investment with strategic alliances* : Strategic alliances are a co-operative approach to achieve the larger goals. Strategic alliances take different forms like licensing, franchising, contract manufacturing, JVs etc. Alliances are a strategy to explore a new market which the companies individually cannot do. Example: Xerox of USA and Fuji of Japan collaborated to explore new markets in Europe and Pacific Rim.

(i) *Mergers and Acquisition* : International mergers and acquisitions refer to those mergers and acquisitions that are taking place beyond the boundaries of a particular country. International mergers and acquisitions are also termed as global mergers and acquisitions or cross-border mergers and acquisitions. They are performed for the purpose of obtaining some strategic benefits in the markets of a particular country, economies of scale and market dominance.

(ii) *Joint venture* : A Joint Venture is an entity formed between two or more parties to undertake economic activity together. The parties agree to create a new entity to share in the revenues, expenses, and control of the enterprise. Joint ventures can be defined as "an enterprise in which two or more investors share ownership and control over property rights and operation".

Question No. 3

Explain some of the important provisions of Anti dumping duties- procedures in India. *(10 marks)*

Answer to Question No. 3

The provisions of anti dumping duties in India are based on the Article VI of GATT, 1994. Sections 9, 9 A, 9 B and 9 C of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed there under form the legal basis for anti-dumping and anti subsidy investigations and for the levy of anti-dumping and countervailing duties. Some of the important procedures are discussed below:

- *Determination of Dumping* : 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.
- *Normal Value* : 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:
  - Comparable representative export price to an appropriate third country.
  - Cost of production in the country of origin with reasonable addition for administrative, selling and general costs and profits.
- *Export Price* : The export price of goods imported into India is the price paid or payable for the goods by the first independent buyer.
- *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.
- *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.
- *Like articles* : 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 can be considered.

- *Injury to the Domestic Industry* : 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. The material injury or threat thereof cannot be based on mere allegation, statement or conjecture. Sufficient evidence must be provided to support the contention of material injury. Injury analysis is a detailed and intricate examination of all the relevant factors. It is not necessary that all the factors considered relevant should individually show injury to the domestic industry. Injury analysis can broadly be divided in two major areas:

  (i) *The Volume Effect* : The Authority examines the volume of the dumped imports, including the extent to which there has been or is likely to be a significant increase in the volume of dumped imports, either in absolute terms or in relation to production or consumption in India, and its affect on the domestic industry.

  (ii) *The Price Effect* : The effect of the dumped imports on prices in the Indian market for like articles, including the existence of price undercutting, or the extent to which the dumped imports are causing price depression or preventing price increases for the goods which otherwise would have occurred. The consequent economic and financial impact of the dumped imports on the concerned Indian industry can be demonstrated, inter alia, by:

    – decline in output

    – loss of sales

    – loss of market share

    – reduced profits

    – decline in productivity

    – decline in capacity utilization

    – reduced return on investments

    – price effects

    – adverse effects on cash flow, inventories, employment, wages, growth, investments, ability to raise capital, etc.

- *Causal Link* : 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. Some of these are volume and prices of imports not sold at dumped prices, contraction in demand or changes in the pattern of consumption, export performance, productivity of the domestic industry etc.

- *Who can File an Application* : A dumping investigation can normally be initiated only upon receipt of a written application by or on behalf of the "Domestic Industry". In order to constitute a valid application, the following two conditions have to be satisfied :

– The domestic producers expressly supporting the application must account for not less than 25% of the total production of the like article by the domestic industry in India; and

– The domestic producers expressly supporting the application must account for more than 50% of the total production of the like article by those expressly supporting and those opposing the application.

- **Relief to the Domestic Industry**

Relief can be provided to the domestic industry in the form of anti- dumping duties or price undertakings.

(i) *Anti-Dumping Duties* : Duties are imposed on a source specific basis and can be expressed either on ad valoren or specific basis. Non-cooperative exporters are required to pay the residuary duty, which is generally the highest of the co-operative exporters.

- *Lesser Duty Rule* : Under the GATT provisions, the national authorities cannot impose duties higher than the margin of dumping. It is, however, suggested that it would be desirable if the appropriate Government authorities impose a lesser duty which is adequate to remove the injury to the domestic industry. Under the Indian laws, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e. dumping margin and the injury margin.

- *Injury Margin* : Besides the calculation of the margin of dumping, the Designated Authority also calculates the injury margin which is the difference between the fair selling price due to the domestic industry and the landed cost of the product under consideration. Landed cost for this purpose is taken as the assessable value under the Customs Act and the basic customs duties.

- *De Minimis Margins* : Any exporter whose margin of dumping is less than 2% of the export price shall be excluded from the purview of anti-dumping duties even if the existence of dumping, injury as well as the causal link are established.

(ii) *Price Undertakings* : The Designated Authority may suspend or terminate investigation if the exporter concerned furnished an undertaking to revise his price to remove the dumping or the injurious effect of dumping as the case may be. No undertaking can however be accepted before preliminary determination is made. No anti-dumping duties are recommended on such exporters from whom price undertaking has been accepted. No price undertaking may, however, be accepted in case it is found that acceptance of such undertaking is impracticable or is unacceptable for any reason.

Question No. 4

What do you mean by containerisation? Explain the types of containers. (10 marks)

Answer to Question No. 4

Containerisation is the technique or practice of stowing freight in reusable containers of uniform size and shape for transportation. The freight may sometimes be oddly shaped and in different quantities. But when stowed and shipped in containers, it can be handled as a single piece thus making it a lot easier to transport which in turn reduces the time and costs involved. Containerisation also enables inter modal transport i.e. the total movement from the origin to the destination using different modes en-route roadways, railways, shipping, airlines etc. It could be either a combination of several or even just two of these modes.

Before containerisation, cargo would have had to be loaded on a truck piece by piece and driven to a port and there at the dock side each piece would be individually unloaded and then hoisted onto the ship. This was a cumbersome process and consumed a lot of time. Ships often needed to be in port for 10 days to complete the process of unloading and loading. With the arrival of containerization, shippers started stuffing their goods into containers and deliver them to the port container yard for shipment.

Containerisation can be defined as a system of inter modal freight and cargo transport using standard ISO containers (known as Shipping Containers or Isotainers) that can be loaded and sealed intact onto container ships, railroad cars, planes and trucks.

Types of Containers

Containers come in different size, types and shapes.

By Size

Even though the International Standards Organisation (ISO) has approved certain external dimensions of general-purpose containers, many additional dimensions exist. Essentially there are five main lengths of containers; they are: 20 ft, 40 ft, 45 ft, 48 ft and 53 ft (note that container sizes are often still given in feet and inches and refer to the outside dimensions of the container). Besides for these lengths, there are two common heights, namely 8 ft 6 in and 9 ft 6 in (the last-mentioned is referred to as a high-cube container). Most of these containers are 8 ft wide, although the 48 ft and 53 ft containers can be 8 ft 6 inches in width.

By Constuction

– *Dry Van (standard height)* : General purpose completely enclosed weatherproof container.
– *Dry Van (high cube)* : Adds an additional foot to the typical interior height of containers.
– *Dry Van (half-height)* : Reduced height container. This is typically more favorable because of reduced rates.
– *Open-Top Container* : A container with a fitted removable roof, or a tarpaulin roof, so the container can be loaded or unloaded from the top used for bulk minerals, heavy machinery.

- *Open-Side Container* : Open-sided containers that have end bulkheads. When the rack is empty, the containers can be folded down for loading oversize pallet.
- *Side-Door Container* : A container fitted with a rear door and a minimum of one side door.

  Refrigerated Container: A container with a refrigeration unit. Temperature is controlled from -25°c to +25°c.
- *Auto Rack* : A specialized piece of railroad rolling stock used to transport automobiles from factories to dealerships.
- *Flat-Rack* : A flatbed with fixed ends for the transportation of cargo of excessive width and weight.
- *Bulktainer* : Any container used to transport dry goods.
- *Tank* : A container, typically large and metallic, used to transport liquid goods and dangerous goods.
- *Gas Bottle* : Cylindrical container used to transport gas.
- *Swapbody* : A container equipped with adjustable support legs that allow the container to load onto the vehicle quickly and easily.
- *High cube palletwide* containers for europallet compatibility
- *Flushfolding flat-rack containers* for heavy and bulky semi-finished goods, out of gauge cargo.
- *Platform or bolster for barrels and drums*, crates, cable drums, out of gauge cargo, machinery, and processed timber.
- *Ventilated* containers for organic products requiring ventilation.
- *Rolling floor* for difficult to handle cargo.

Question No. 5

Write short notes on any four of the following:

(a) Porter's five forces model

(b) Theory of comparative advantage

(c) Principles and structure of ASEAN

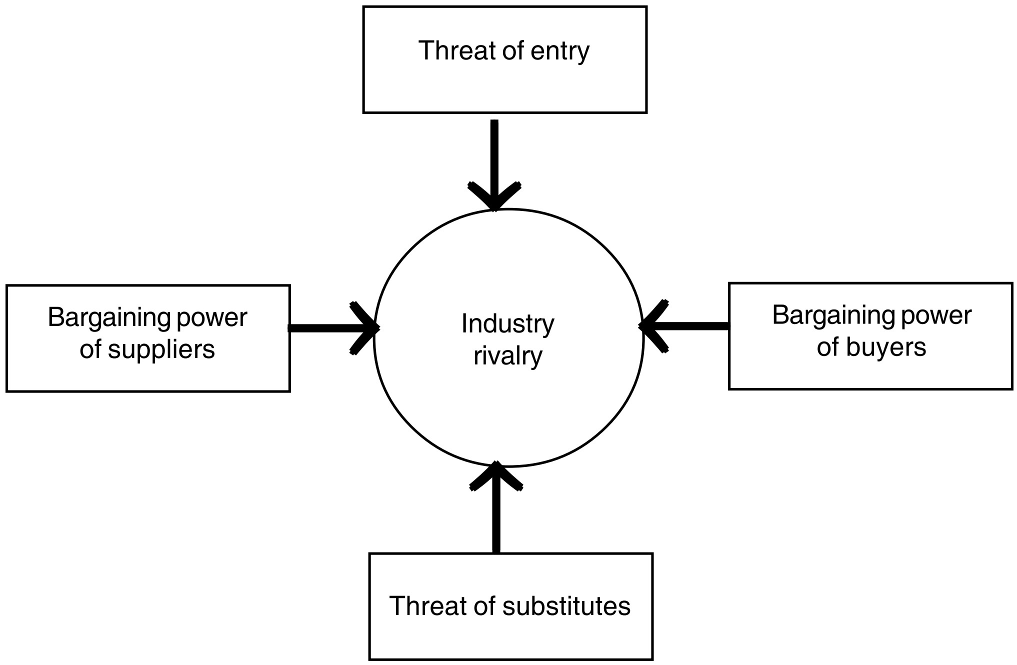
(d) GATS

(e) Regulatory framework for anti dumping in India. *(5 marks each)*

Answer to Question No. 5(a)

Porter's five forces model

Porter's five forces model is an analysis tool that uses five forces to determine the profitability of an industry and shape a firm's competitive strategy. It is a framework that classifies and analyzes the most important forces affecting the intensity of competition in an industry and its profitability level. Five forces model was created by M. Porter in 1979 to understand how five key competitive forces are affecting an industry. The five forces identified are:



These forces determine an industry structure and the level of competition in that industry. The stronger competitive forces in the industry are, the less profitable it is. An industry with low barriers to enter, having few buyers and suppliers but many substitute products and competitors will be seen as very competitive and thus, not so attractive due to its low profitability. It is every strategist's job to evaluate company's competitive position in the industry and to identify what strengths or weakness can be exploited to strengthen that position. The tool is very useful in formulating firm's strategy as it reveals how powerful each of the five key forces is in a particular industry.

Threat of new entrants : This force determines how easy (or not) it is to enter a particular industry. If an industry is profitable and there are few barriers to enter, rivalry soon intensifies. When more organisations compete for the same market share, profits start to fall. It is essential for existing organisations to create high barriers to enter to deter new entrants. Threat of new entrants is high when:

- Low amount of capital is required to enter a market;
- Existing companies can do little to retaliate;
- Existing firms do not possess patents, trademarks or do not have established brand reputation;
- There is no government regulation;
- Customer switching costs are low;

- There is low customer loyalty;
- Products are nearly identical;
- Economies of scale can be easily achieved.

Bargaining power of suppliers : Strong bargaining power allows suppliers to sell higher priced or low quality raw materials to their buyers. This directly affects the buying firms' profits because it has to pay more for materials. Suppliers have strong bargaining power when:

- There are few suppliers but many buyers;
- Suppliers are large and threaten to forward integrate;
- Few substitute raw materials exist;
- Suppliers hold scarce resources;
- Cost of switching raw materials is especially high.

Bargaining power of buyers : Buyers have the power to demand lower price or higher product quality from industry producers when their bargaining power is strong. Lower price means lower revenues for the producer, while higher quality products usually raise production costs. Both scenarios result in lower profits for producers. Buyers exert strong bargaining power when:

- Buying in large quantities or control many access points to the final customer;
- Only few buyers exist;
- Switching costs to other supplier are low;
- They threaten to backward integrate;
- There are many substitutes;
- Buyers are price sensitive.

Threat of substitutes : This force is especially threatening when buyers can easily find substitute products with attractive prices or better quality and when buyers can switch from one product or service to another with little cost. For example, to switch from coffee to tea doesn't cost anything, unlike switching from car to bicycle.

Rivalry among existing competitors : This force is the major determinant on how competitive and profitable an industry is. In competitive industry, firms have to compete aggressively for a market share, which results in low profits. Rivalry among competitors is intense when:

- There are many competitors;
- Exit barriers are high;
- Industry of growth is slow or negative;
- Products are not differentiated and can be easily substituted;

- Competitors are of equal size;
- Low customer loyalty.

Answer to Question No. 5(b)

Theory of comparative advantage

The classical economists writing in the first quarter of the nineteenth century reinforced the case for free trade. The theory of comparative advantage emerged during this period and strengthened the understanding of the nature of trade and its benefits. David Ricardo has received most of the credit for developing this important theory, although James Mill and Robert Torrens had similar ideas around the same time.

The theory of comparative advantage suggests that a country should export goods in the country in which its relative cost advantage, and not the absolute cost advantage, is greatest in comparison to other countries.

According to Smith, if one country has an absolute advantage over the other country in one line of production and the other country has an absolute advantage over the first country in a second line of production; both countries can gain by trading. But what if one country is more productive than another country in all lines of production? Ricardo claimed that if country I can produce all goods with less labor cost than country II then also it will benefit the countries to trade so long as long as country II is not equally less productive in all lines of production.

Ricardo used England and Portugal as examples in his demonstration, the two goods they produced being wine and cloth. Ricardo assumed that Portugal was more efficient in making both cloth and wine. Table 1.1 shows how Ricardo summed up the cost conditions in the two countries.

Table 1.1

Cost comparisons

Labour cost of production (in hours)		
	1 unit of wine	*1 unit of cloth*
Portugal	80	90
England	120	100

According to this model, Portugal has an absolute advantage in the production of wine as well as in the production of cloth, because the labor cost of production for each unit of the two commodities is less in Portugal than in England.

To demonstrate that trade between England and Portugal will, even in this case, lead to gains for both countries, it is useful to introduce the concept of opportunity cost. The opportunity cost for a good X is the amount of other goods which have to be given up in order to produce one (additional) unit of X. Table 1.2 gives the opportunity costs for producing wine and cloth in Portugal and England. These costs have been constructed on the basis of the information given in Table 1.1.

Table 1.2

Opportunity costs

Opportunity costs for		
	Wine	*Cloth*
Portugal	80/90 = 8/9	90/80 = 9/8
England	120/100 = 12/10	100/120 = 10/12

A country has a comparative advantage in producing a good if the opportunity cost for producing the good is lower at home than in the other country. Table 1.2 shows that Portugal has the lower opportunity cost of the two countries in producing wine, while England has the lower opportunity cost in producing cloth. Thus Portugal has a comparative advantage in the production of wine and England has a comparative advantage in the production of cloth.

The comparative advantage proposition states that a less developed country that lacks an absolute advantage in any goods can still engage in mutually beneficial trade, and that an advanced country whose domestic industries are more efficient than those in any other country can still benefit from trade even as some of its industries face intense import competition.

Answer to Question No. 5(c)

Principles and structure of ASEAN

ASEAN, the Association of Southeast Asian Nations is the most prominent regional grouping in Asia. It is a geo-political and economic organization of ten countries located in Southeast Asia, which was formed on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Since then, membership has expanded to include Brunei, Burma (Myanmar), Cambodia, Laos, and Vietnam. Its aims include accelerating economic growth, social progress, and cultural development among its members, protection of regional peace and stability, and opportunities for member countries to discuss differences peacefully. In their relations with one another, the ASEAN Member States have adopted the following fundamental principles, as contained in the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976:

- Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
- The right of every State to lead its national existence free from external interference, subversion or coercion;
- Non-interference in the internal affairs of one another;
- Settlement of differences or disputes by peaceful manner;
- Renunciation of the threat or use of force; and
- Effective cooperation among themselves.

Structure:

- The supreme authority in ASEAN is the ASEAN Summit of national leaders. Decisions made at the summit are intended to represent a consensus among the ASEAN nations, although the legal authority of such decisions has not been tested.
- Summit meetings have been held annually, but the charter foresees meetings twice a year, along with special meetings when necessary.
- The chairmanship rotates among the members every year by alphabetical order. The charter establishes councils at ministerial level to handle substantive matters.
- The ASEAN Economic Community Council, formerly known as the ASEAN Economic Ministers meeting, will meet twice yearly and coordinate the development of the AEC.
- The council is supported by the Senior Economic Officials Meeting, a grouping of national-level bureaucrats that meets between the council meetings.
- The charter also requires each member to station a permanent representative in Jakarta. A committee of permanent representatives will liaise with the secretariat, ministerial councils and national secretariats to establish within the members' national governments.
- The ASEAN Secretariat provides administrative support to ASEAN. The staffs of the secretariat are hired competitively on fixed-term contracts.
- The secretary general heads the secretariat and is appointed for a five-year term is mandated to initiate, advise, coordinate, and implement ASEAN activities.
- The nationality of the secretary general also rotates based on alphabetical order. The members of the professional staff of the ASEAN Secretariat are appointed on the principle of open recruitment and region-wide competition.
- ASEAN has several specialized bodies and arrangements promoting inter-governmental cooperation in various fields

Answer to Question No. 5(d)

GATS

The General Agreement on Trade in Services (GATS) is the first and only set of multilateral rules governing international trade in services. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution. Services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20% of global trade. Following are the basic principles-

- All services are covered by GATS
- Most-favoured-nation treatment applies to all services, except the one-off temporary exemptions

- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments: normally unrestricted
- Individual countries' commitments: negotiated and bound
- Progressive liberalization: through further negotiations

The agreement covers all internationally-traded services — for example, banking, telecommunications, tourism, professional services, etc. It also defines four ways (or "modes") of trading services:

- services supplied from one country to another (e.g. international telephone calls), officially known as "cross-border supply" (in WTO jargon, "mode 1")
- consumers or firms making use of a service in another country (e.g. tourism), officially "consumption abroad" ("mode 2")
- a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially "commercial presence" ("mode 3")
- individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially "presence of natural persons" ("mode 4").

Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. Most Favoured Nation (MFN) applies to all services, but some special temporary exemptions have been allowed. The commitments appear in "schedules" that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment. These clearly defined commitments are "bound": like bound tariffs for trade in goods, they can only be modified after negotiations with affected countries.

Answer to Question No. 5(e)

Regulatory framework for anti dumping in India

Under the existing WTO arrangement, and in terms of various provisions under the Customs Tariff Act of 1975 (as amended in 1995) and Rules framed there under, anti-dumping and allied measures constitute the legal framework, within which the domestic industry can seek necessary relief and protection against dumping of goods and articles by exporting companies and firms of any country from any part of the world. These measures have assumed a great deal of relevance in India in recent times in view of the scenario arising out of unfair trade practices adopted by some of our trading partners, especially in the post-QR phase.

The Anti-Dumping and allied measures are complex legal disciplines which are often not within the easy comprehension of the trade and industry who are the users of these measures. To obviate this difficulty faced by large sections of the domestic industry, there is a need to explain the basic concepts, legal provisions and procedural aspects in clear and easy language for their benefit. This will facilitate the domestic industry to avail of these remedial measures in the wake of alleged dumping and of injury caused by unfair trade practices.

However, it is always necessary to bear in mind that the anti-dumping action can never be an action based on presumption and vague complaints and only on very rare occasions suo-moto proceedings can be initiated. The requisite parameters of law have to be duly complied with and need to be fully supported and substantiated with facts and figures before any action could be initiated.

Sections 9, 9 A, 9 B and 9 C of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed there under form the legal basis for anti-dumping and anti subsidy investigations and for the levy of anti-dumping and countervailing duties. These laws are in consonance with the WTO Agreements on Anti Dumping and Anti Subsidy countervailing measures.

Question No. 6

Distinguish between following:

(a) Anti-Dumping Duty and Normal Customs Duty.

(b) Domestic and international business. *(5 marks each)*

Answer to Question No. 6(a)

Although anti dumping duty is levied and collected by the Customs Authorities, it is entirely different from the Customs duties not only in concept and substance, but also in purpose and operation. The following are the main differences between the two: -

- Conceptually, anti dumping and the like measures in their essence are linked to the notion of fair trade. The object of these duties is to guard against the situation arising out of unfair trade practices while customs duties are there as a means of raising revenue and for overall development of the economy.
- Customs duties fall in the realm of trade and fiscal policies of the Government while anti dumping and anti subsidy measures are there as trade remedial measures.
- The object of anti dumping and allied duties is to offset the injurious effect of international price discrimination while customs duties have implications for the government revenue and for overall development of the economy.
- Anti dumping duties are not necessarily in the nature of a tax measure inasmuch as the Authority is empowered to suspend these duties in case of an exporter offering a price undertaking. Thus such measures are not always in the form of duties/tax while Customs Duty are always in form of a tax.
- Anti dumping and anti subsidy duties are levied against exporter / country inasmuch as they are country specific and exporter specific as against the customs duties which are general and universally applicable to all imports irrespective of the country of origin and the exporter.

Thus, there are basic conceptual and operational differences between the customs duty and the anti dumping duty. The anti dumping duty is levied over and above the normal customs duty chargeable on the import of goods in consideration.

Answer to Question No. 6(b)

Trade means exchange of goods and services for the satisfaction of human wants. The process of exchange includes purchase of goods and services and their sale. The trade may take place within geographical boundaries of countries or may be extended to across the border. When trade is confined to the geographical limits of a country, it is a domestic or national trade. In national trade both the buyer and the seller are of the same countries and they enter into trade-agreements subject to the national laws, practices and customs of trade. But International or foreign trade refers to the trade between two countries. Technically, domestic trade and International trade are more or less identical and are based on the same basic principles of trades. But practically, there are certain differences between domestic and international business.

(i) *Environment* : The economic, political, legal, socio-cultural, competitive and technology environments are well known in case of domestic business due to the familiarity of geography and place of operations, hence the organization can take the necessary precautions to assess its impact and adjust quickly to the changes in the same. In international operations the various aspects of the macro external environment are not fully known unless the business has established and created a place for itself in the market. Thus a number of innumerable hidden environmental factors may emerge during the settlement period which may pose problems.

(ii) *Plan and Strategy* : Plans and strategies are generally worked out for the short term. The short term plans are linked together and carried forward into the long run. The inverse is also possible as domestic business offers the flexibility to organizations. In case of international business only a well thought out, proven, practical long term time-bound planning and strategy will work.

(iii) *Competition* : The competitive forces operating in the domestic business environment are restricted to a local boundary. The movement of competitive forces can thus be analyzed and understood more clearly. In case of international business competitive forces are not restricted to a local boundary. They extend over several countries, thereby making it difficult to analyze their motive and movement.

(iv) *Difference in Currencies* : There is only one currency acceptable all over the country and therefore there are no difficulties in making payments in internal trade. But, each country has its own monetary system which differs from others. Exchange rates between the two currencies are fixed by the monetary authorities under the rules framed by the International Monetary Fund. All payments for imports are to be made in the exporting country's currency which is not freely available in importers country. The scarcity of foreign currency may sometimes limit the size of imports from other countries.

(v) *Tariffs and Quotas* : The tariff rates and quotas imposed by various countries on their exports and imports do not directly and significantly influence domestic business operations. The international businesses are directly and significantly influenced by the tariff rates imposed by various countries. Also they have to operate within the quotas of exports and imports imposed by different countries.

(vi) *Research and Development*: It is reasonable and relatively simpler to carry out business product research, innovations, demand analysis and customer survey in domestic business. Also the reliability and success rate of their results are much higher.

(vii) *Human Resources* : Due to past successes, proven track record and established systems, business can prosper even if the human resources have minimum skills and knowledge. The task of human resources management is much simpler in domestic business. The international business requires multi-lingual, multi-strategic and multi-cultural human resources to handle varied risks spread over countries. Thus the task of human resource management is much more complex.

(viii) *Organizational Vision and Objective* : The organizational vision and objective in domestic business is narrowed down to work in a single country with a steady growth objective. For e.g. a part of the vision of Tata Steel in 1998 – 99 was "In the coming decade, we will become the most competitive steel plant and so serve the community and the nation." In case of international business the organizational vision and objective is more broadened to cover many countries and geographic and cultural diversity may influence the same. For e.g. the vision of Tata Steel Group's vision currently states "We aspire to be the global steel industry benchmark for Value Creation and Corporate Citizenship".

(ix) *Investment* : Depending on the size of domestic business operations one can start with a minimum investment. Involvement of regulatory bodies in respect of small local business enterprises is limited. On the other hand all overseas operations except exports, call for huge investments to set up and expand the business in many countries. Special regulatory bodies are involved in the process since foreign currency is transacted.

(x) *Distribution* : Domestic business houses can use at its discretion to select any distribution channel to reach the customer. For e.g. small "Mom and Pop" stores are one of the most popular and widely used distribution channels for Fast Moving Consumer Goods (FMCG) in rural and urban India. The choice of distribution channel in international business operations is governed by the government or market practice of the nation where the business is operating. For e.g. Cash and carry stores and shopping malls which are very commonly used channels in the developed markets are now catching up in urban India.

(xi) *Logistics* : Domestic business may involve use of conventional logistical methods engaging domestic players for procurement of raw materials and reaching of final products to the consumer. For e.g. hand drawn carts and cycles are very commonly used means of transportation in the local Indian business operations even today. International business engages international players involving advanced technology and systems for effective logistical operations. For e.g. containerized transportation is the standard form of reaching the goods to the required destination in most developed nations.

(xii) *Advertising and Promotion* : Advertising, personal selling and other promotional methods are subject to the regulations prevailing in the domestic business operations. For e.g. advertisement and promotion of pharmaceutical drugs, cigarettes and alcohol are restricted in India. In case of international business different countries have different regulations with regard to advertisement and promotion. For e.g. advertisements of cigarettes and alcohol are permitted in some developed nations.

(xiii) *Approach* : Domestic business's approach is ethnocentric. It means that domestic companies formulate strategies, product design etc. towards national markets, customers and competitors. International business's approach can be polycentric, regiocentric or geocentric. Under polycentric approach international business enters foreign markets by establishing foreign subsidiaries. Under region-centric approach, they export the product to the neighbouring countries of the host country. Under the geocentric approach, they treat the entire world as a single market for production, marketing, investment and drawing various inputs.

(xiv) *Difference in Natural and Geographical Conditions* : Natural resources like availability of raw materials, composition of soil, fertility of soil, rainfall, temperature etc. differ widely from country to country. On the basis of this speciality, countries specialise themselves in the production of certain selected commodities and therefore they produce better quality of goods at lower rates and sell them in the International market. It causes difference in domestic trade and foreign trade.

(xv) *Different Legal Systems* : Different legal systems are operated by different countries and they all widely differ from each other. The existence of different legal systems makes the task of businessmen more difficult as they have to follow legal provisions of the two countries as regards the particular trade.

(xvi) *Mobility of Factors of Production* : Mobility of different factors of production is less as between nations than in the country itself. However, with the advent of air transport, the mobility of labour has increased manifold. Similarly mobility of capital has increased with the development of international banking. Inspite of these developments, mobility of labour and capital is not as much as it is found within the country itself.

(xvii) *Sovereign Political Entities* : Each country is an independent sovereign political entity. Different countries impose different types of restrictions on imports and exports in the national interest. The importers and exporters shall have to observe such restrictions while entering into agreement likeImposition of tariffs and customs duties on imports and exports; Quantitative restrictions like quota etc. Exchange control; Imposition of more local taxes etc. No such restrictions are imposed on domestic trade or restrictions imposed on internal trade are quite different.

Question No. 7

Answer any six questions from the following.

(a) Describe the institutional structure of SAARC.

(b) *A multinational corporation has to face various cultural issues – explain.*

(c) *Briefly explain the principles of World Trade Organization.*

(d) *Explain the role of information technology in logistics management*

(e) *What are the reasons for forming strategic alliances by any company?*

(f) *What are the special facilities and incentives available to the exporters in Special Economic Zones?*

(g) *What do you mean by subsidy? Explain subsidy and specificity as per the SCM Agreement of WTO.* *(5 marks each)*

Answer to Question No. 7(a)

Institutional Structure of SAARC

Summits : The highest authority of the Association rests with the Heads of State or Government.

Council of Ministers : Comprising the Foreign Ministers of member states is responsible for the formulation of policies; reviewing progress; deciding on new areas of cooperation; establishing additional mechanisms as deemed necessary; and deciding on other matters of general interest to the Association. The Council meets twice a year and may also meet in extraordinary session by agreement of member states.

Standing Committee : Comprising the Foreign Secretaries of member states is entrusted with the overall monitoring and coordination of programmes and the modalities of financing; determining inter-sectoral priorities; mobilising regional and external resources; and identifying new areas of cooperation based on appropriate studies. It may meet as often as deemed necessary but in practice it meets twice a year and submits its reports to the Council of Ministers.

Programming Committee : Comprising the senior officials meets prior to the Standing Committee sessions to scrutinize Secretariat Budget, finalise the Calendar of Activities and take up any other matter assigned to it by the Standing Committee.

Technical Committees : Comprising representatives of member states, formulate programmes and prepare projects in their respective fields. They are responsible for monitoring the implementation of such activities and report to the Standing Committee. The chairmanship of each Technical Committee normally rotates among member countries in alphabetical order, every two years.

Action Committees : According to the SAARC Charter, there is a provision for Action Committees comprising member states concerned with implementation of projects involving more than two, but not all member states. At present, there are no such Action Committees.

Answer to Question No. 7(b)

Multinational companies face a number of different cultural problems as they move forward in today's global marketplace. Given the nature of the global environment, multinational companies will increasingly find themselves having to make decisions that are based on cultural problems created by the global market.

- *Diversity* - One of the main cultural challenges faced by multinational companies is the diversity of cultural perspectives found within the organization. This can cause problems in terms of management and policy development, because it makes it difficult for the organization to make company-wide policy decisions without having to take into consideration the variety of cultural viewpoints represented within the organization itself. In short, as companies move forward in the global context, too much diversity may create problems.

- *Organizational Culture* - Along the same lines as an overabundance of diversity, multinational companies also face the difficult task of developing a unified organizational culture from within. Because of the different cultural perspectives represented within the organization as a whole, company leaders generally face the difficult task of having to create a workplace culture to which all employees can adhere. Concepts of teamwork and unity may have different meanings across the national boundaries, making it far more tricky to develop a unified company perspective.

- *Human Resources* - Companies of a multinational variety will also face problems when it comes to human resources operations. For instance, when it comes to recruiting, human resources managers may find themselves having to overcome cultural barriers to find qualified candidates for positions abroad. In some cases, management professionals may find themselves facing a lack of qualified talent to fill important positions that require advanced degrees and training. Finding employees at home who are qualified or willing to step in and fill such positions in a context outside of their home country may also prove problematic. Some employees may simply not want to serve in certain parts of the world.

- *Sales* - Another problem that multinational companies may face in a global environment is the ability to develop products and market those products in a way that appeals to a wide segment of the world's population. Companies run the risk of developing products and strategies that run contrary to the cultural norms of the people to which they are attempting to market the products. Multinational companies face the challenge of developing and marketing products that have global appeal.

- *Communication and Cultural Norms* - Another significant issue faced by multinational companies is how business is conducted across international lines. Differences in communication, for instance, make it essential to understand cultural norms in the countries in which these companies operate. For instance, John Hooker at Carnegie Melon University points out that some forms of communication have implied and understood meanings that only make sense within a culture's context. This form of "high context communication" requires knowledge of the culture and its understood traditions.

- *Etiquette and Customs* - Multinational companies also have to have representatives and leaders who know how to avoid violating or ignoring cultural practices and customs in business meetings. For instance, sending a woman to conduct business negotiations in the Middle East might be offensive to some

Middle Eastern businessmen who typically don't socialize in public with women. In some Asian cultures, bowing, rather than shaking hands, is a more acceptable form of greeting. Other etiquette concerns can include eating customs in business dinners, bringing and giving gifts when appropriate, differences in body language and dress and even methods of negotiation.

Answer to Question No. 7(c)

Principles of the Trading System

Some fundamental principles run throughout all the WTO agreements. These principles are the foundation of the multilateral trading system.

A. Trade without Discrimination

1. *Most-favoured-nation (MFN)* : *"Treating other people equally"*. Under the WTO agreements, countries cannot normally discriminate between their trading partners. If you grant someone a special favour (such as a lower customs duty rate for one of their products), you have to do the same for all other WTO members. This principle is known as most-favoured-nation (MFN) treatment. It is very important and the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or ser-vices from all its trading partners — whether rich or poor, weak or strong.
2. *National treatment : "Treating foreigners and locals equally"*. The principle of national treatment states that imported and locally-produced goods should be treated equally, at least after the foreign goods has entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of "national treatment" (giving others the same treatment as one's own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these. National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

B. Freer Trade : Gradually, through Negotiation

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

C. Predictability : through Binding and Transparency

Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable. In the WTO, when countries agree to open their markets for goods or services, they “bind” their commitments.

D. Promoting Fair Competition

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

E. Encouraging Development and Economic Reform

The WTO system contributes to development. The agreements themselves inherit the provisions of GATT that allow for special assistance and trade concessions for developing countries. Over three quarters of WTO members are developing countries and countries in transition to market economies.

Answer to Question No. 7(d)

The application of IT can support logistics and help in resolving several problems. Over and above assisting in managerial tasks such as planning, deciding on the optimal route of transportation and allocation, distribution, etc. IT can play a vital role in logistics.

1) *Sales Order Processing and Invoicing* : Many distribution operations serve highly competitive market. Hence, it is essential that the information about sales order is transmitted by sales office to the distribution department in an efficient manner for dispatch. Information technology plays a key role in the controlling the order cycle, dispatch and raising invoice by accounts for customers. Information technology also helps accounting for necessary controls over payments from different customers.

2) *Warehousing and Stock Control* : Integration of stock records, sales order processing, replenishment of stocks and locations of different products at different warehouses are controlled through it. It helps in transfer of stocks from one location to another to reduce inventory and provide customers services in cost effective manner. It also helps in providing the exact information out delivery schedule, and a multi product company at multi-location is able to quickly initiate steps for correlating production and customers requirement.

3) *Fleet Management* : Information technology assists in vehicle routing, scheduling, fleet management, computerized round planning is used to evaluate, distribution, fleet mix, provide costing to evaluate alternative distribution networks. Successful implementation of computerized round planning system realize on accurate and timely information about order processing, cost control, order consolidation, distribution constituents like access restrictions, lunch time closing, etc.

4) *Tracking goods in transit* : One of the major problems in logistics has been lost and untracked parcels thereby affecting inventory policies, etc. Real time tracking of goods throughout the supply chain provides excellent opportunities for improving customer service. Real time information on delivery time supports just-in-time manufacture and retail, enabling organizations to make strategic decisions with full confidence in the availability of goods. Goods tracking is also important for direct end-customer service.

Answer to Question No. 7(e)

Most firms enter into alliances out of need. According to an executive, "With alliances, we can do more for less". Whatever the needs driving alliance formation, managements must take the time to analyse why an alliance is the best strategy. The president of an automotive industry had once explained, "Understanding why you need a partnership is the most critical step. Sorting out the whys in the equation will in turn dictate the answers to key issues such as with whom you want to collaborate, how the partners will combine their strengths, and how the venture will be structured and managed." Some of the reasons for creating strategic alliances are given below:

(i) *Growth strategies and entering new markets*: In today's fast paced environment companies simply do not have the time to establish new markets one-by one. Therefore, forming an alliance with an existing company already in that marketplace is a very appealing alternative. Partnering with an international company can make the expansion into unfamiliar territory a lot easier and less stressful for a company.

(ii) *Obtain new technology* : All companies cannot provide the technology that they need to effectively compete in their markets on their own. Therefore, they can team up with other companies who do have the resources to provide the technology or who can pool their resources so that together they can provide the needed technology. Both sides receive benefit from the partnership. Technology transfer is viewed as being significant to the success of a strategic alliance.

(iii) *Reduce cost by outsourcing* : Another reason for forming strategic alliances is to outsource business functions, which can include, marketing, production, accounting, sales, or virtually any other process, to a company which can do it better and cheaper. Indeed, many companies are forming alliances looking for the best quality or technology, or the cheapest labor or production costs.

(iv) *Reduce financial risk and share costs of research and development* : Some companies may find that the financial risk that is involved in pursuing a new product or production method is too great for a single company to undertake. In such cases two or more companies agree to spread the risk among all of them.

(v) *Achieve or ensure competitive advantage* : Alliances are particularly alluring to small businesses because they provide the tools businesses need to be competitive. For many small companies the only way they can stay competitive and even survive in todays technologically advanced, ever-changing business world is to form an alliance with another company or companies. Small companies realize the mutual benefits they can derive from strategic alliances in areas such as marketing, distribution, production, research and development, and outsourcing. By forming alliances with other companies, small businesses are able to accomplish bigger projects more quickly and profitably, than if they tried to do it on their own.

(vi) *Knowledge transfer* : Companies enter into alliances because there is knowledge required to create something new. An example here is the Senseo alliance between Philips and Sara Lee . Each of the parties was lacking the knowledge the other had. Philips is good in creating household appliances and Sara Lee knows all about coffee. Together they were able to bring a balanced coffeemaker to the market with dedicated Senseo coffee supplies.

(vii) *Market development* : Companies can enter into alliances to be able to develop new markets, whether it be geographic extensions or new market segments. In 1994 Pepsi and Starbucks entered into an alliance to bring bottled cold coffee drinks to the market. For both of them a complete new market was created that was difficult for either of them to enter without the knowledge and capabilities of the other.

(viii) *Efficiency* : Companies can also form strategic alliances to focus on cost reduction and increasing efficiencies. Take for example the Rolls Royce jet engine division. They established in 2003 an alliance with several logistics partners to increase the overall value to Rolls Royce's customers. Coming from a traditional purchase relationship this partnership was transformative. No longer the focus was on selecting the supplier with the lowest price, but on the customer experience. Partners were also encouraged to collaborate amongst each other, thus optimizing the entire system rather than optimizing in silos as previously was done. This partnership led to an increase to 99% on time delivery and a 20% overall cost reduction without reducing partner profitability.

(ix) *Satisfy customer demands* : Customer demands in many markets are changing. For example, in office automation, customers now prefer a "systems solution" and want to rely on a single company to service all equipment.

(x) *Use excess capacity* : A large number of companies have used the restructuring effect of manufacturing alliances to soak up excess capacity.

Answer to Question No. 7(f)

The incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment include:-

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
- 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- Exemption from minimum alternate tax under section 115JB of the Income Tax Act.
- External commercial borrowing by SEZ units upto US $ 500 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State sales tax and other levies as extended by the respective State Governments.

The major incentives and facilities available to SEZ developers include:-

– Exemption from customs/excise duties for development of SEZs for authorized operations approved by the BOA.

– Income Tax exemption on income derived from the business of development of the SEZ in a block of 10 years in 15 years under Section 80-IAB of the Income Tax Act.

– Exemption from minimum alternate tax under Section 115 JB of the Income Tax Act.

– Exemption from dividend distribution tax under Section 115O of the Income Tax Act.

– Exemption from Central Sales Tax (CST).

– Exemption from Service Tax (Section 7, 26 and Second Schedule of the SEZ Act).

Answer to Question No. 7(g)

In common parlance, the term subsidy means money granted by the State or a Public Body to keep the prices of commodities under control. Subsidy may take the form of direct or indirect government grants on production or exportation of goods including any special subsidy on transportation of any product. The subsidy is usually given to remove some type of burden and is often considered to be in the interest of the public.

Definition of subsidy as per the SCM Agreement

Article 1 of the Agreement on Subsidies and Countervailing Measures (Agreement on SCM) defines subsidy as involving a financial contribution by a government or any public body within the territory of a member or any form of income or price support which confers a benefit on the recipient. The definition of the term "subsidy" contains three basic elements. All three of these elements must be satisfied in order for a subsidy to exist.

(i) *a financial contribution* : The Agreement requires a financial contribution and contains a list of the types of measures that represent a financial contribution, e.g., grants, loans, equity infusions, loan guarantees, fiscal incentives, the provision of goods or services, the purchase of goods.

(ii) *by a government or any public body within the territory of a Member* : In order for a financial contribution to be a subsidy, it must be made by or at the direction of a government or any public body within the territory of a Member. Thus, the SCM Agreement applies not only to measures of national governments, but also to measures of sub-national governments and of such public bodies as state owned companies.

(iii) *which confers a benefit* : A financial contribution by a government is not a subsidy unless it confers a "benefit." In many cases, as in the case of a cash grant, the existence of a benefit and its valuation will be clear.

'Subsidy' has been defined to mean any financial contribution provided by aGovernment or a Public Body in the form of transfer of funds, tax incentives,provision of goods or service or any other form of income or price support by which a benefit is conferred.

Specificity as per the SCM Agreement

Article 2 of the Agreement on SCM provides a subsidy to be treated as specific if its availability is restricted only to the specified recipients i.e. to a specific enterprise or industry or a group of enterprises or industries (referred to as 'certain enterprises'). The following principles may determine whether a subsidy is specific:

- where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.
- where the eligibility for grant of subsidy is governed by objective criteria i.e. which are neutral and do not favour certain enterprises over others, which are economic in nature and horizontal in application, such as number of employees or size of enterprises etc and the eligibility is automatic; specificity shall not exist.
- if there are reasons to believe that a subsidy programme, though not specific in accordance with the above principles, in fact is for use by a limited number of certain enterprises or for predominant use of certain enterprises or if the discretion is so used that the benefits flow to certain enterprises, the subsidy shall be specific.

TEST PAPER 2/2013

Time allowed : 3 hours *Max. Marks : 100*

***NOTE** : Answer ALL Questions.*

Question No. 1

McDonald's when entered into India had to come out with new variety of burgers as maximum of Indian population did not eat beef. Nor the company could use pork because Muslim population was against it. Similarly many multinationals find it difficult to adjust into the local cultural environment. What are such cultural issues face by multinationals? Explain them. *(10 marks)*

Answer to Question No. 1

Multinational companies face a number of different cultural problems as they move forward in today's global marketplace. Given the nature of the global environment, multinational companies will increasingly find themselves having to make decisions that are based on cultural problems created by the global market.

- *Diversity* - One of the main cultural challenges faced by multinational companies is the diversity of cultural perspectives found within the organization. This can cause problems in terms of management and policy development, because it makes it difficult for the organization to make company-wide policy decisions without having to take into consideration the variety of cultural viewpoints represented within the organization itself. In short, as companies move forward in the global context, too much diversity may create problems.

- *Organizational Culture* - Along the same lines as an overabundance of diversity, multinational companies also face the difficult task of developing a unified organizational culture from within. Because of the different cultural perspectives represented within the organization as a whole, company leaders generally face the difficult task of having to create a workplace culture to which all employees can adhere. Concepts of teamwork and unity may have different meanings across the national boundaries, making it far more tricky to develop a unified company perspective.

- *Human Resources* - Companies of a multinational variety will also face problems when it comes to human resources operations. For instance, when it comes to recruiting, human resources managers may find themselves having to overcome cultural barriers to find qualified candidates for positions abroad. In some cases, management professionals may find themselves facing a lack of qualified talent to fill important positions that require advanced degrees and training. Finding employees at home who are qualified or willing to step in and fill such positions in a context outside of their home country may also prove problematic. Some employees may simply not want to serve in certain parts of the world.

- *Sales* - Another problem that multinational companies may face in a global environment is the ability to develop products and market those products in a way that appeals to a wide segment of the world's population. Companies run the risk of developing products and strategies that run contrary to the cultural norms of the people to which they are attempting to market the products. Multinational companies face the challenge of developing and marketing products that have global appeal.

- *Communication and Cultural Norms* - Another significant issue faced by multinational companies is how business is conducted across international lines. Differences in communication, for instance, make it essential to understand cultural norms in the countries in which these companies operate. For instance, John Hooker at Carnegie Melon University points out that some forms of communication have implied and understood meanings that only make sense within a culture's context. This form of "high context communication" requires knowledge of the culture and its understood traditions.

- *Etiquette and Customs* - Multinational companies also have to have representatives and leaders who know how to avoid violating or ignoring cultural practices and customs in business meetings. For instance, sending a woman to conduct business negotiations in the Middle East might be offensive to some Middle Eastern businessmen who typically don't socialize in public with women. In some Asian cultures, bowing, rather than shaking hands, is a more acceptable form of greeting. Other etiquette concerns can include eating customs in business dinners, bringing and giving gifts when appropriate, differences in body language and dress and even methods of negotiation.

Question No. 2

Briefly explain the process in which WTO resolves trade dispute. *(10 marks)*

Answer to Question No. 2

Dispute Settlement Mechanism

Dispute settlement is the central pillar of the multilateral trading system. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced. The system is based on clearly-defined rules, with timetables for completing a case.

— First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership.

— Appeals based on points of law are possible.

Principles of Dispute Settlement

A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. A third group of countries can declare that they have an interest in the case and enjoy some rights. The dispute settlement procedure is based on the following principles –

- equitable,
- fast,
- effective,
- mutually acceptable

Settling disputes is the responsibility of the Dispute Settlement Body (the General Council), which consists of all WTO members. The Dispute Settlement Body has the sole authority to establish "panels" of experts to consider the case, and to accept or reject the panels' findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling. The dispute settlement is a two stage process :

The Panel Process

Appointment of Panel : The panellists are usually chosen in consultation with the countries in dispute. Only if the two sides cannot agree does the WTO director-general appoint them. The country "in the dock" can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel).

Panels consist of three to five experts from different countries who examine the evidence and decide who is right and who is wrong. Panellists for each case can be chosen from a permanent list of well-qualified candidates, or from elsewhere. They serve in their individual capacities. They cannot receive instructions from any government.

Power of Panel : Officially, the panel is helping the Dispute Settlement Body make rulings or recommendations. The panel's report is passed to the Dispute Settlement Body, which can only reject the report by consensus. Since, the panel's report can only be rejected by consensus in the Dispute Settlement Body, its conclusions are difficult to overturn. The panel's findings have to be based on the agreements cited.

First stage : consultation (up to 60 days). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, they can also ask the WTO director-general to mediate or try to help in any other way.

Second stage : the panel (up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country "in the dock" can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel

Working of a Panel : A dispute can go through the various stages in the WTO. At all stages, countries in dispute are encouraged to consult each other in order to settle "out of court". At all stages, the WTO director-general is available to offer his good offices, to mediate or to help achieve a conciliation. The main stages of how the panel works are given below.

1. *Before the first hearing* : Each side in the dispute presents its case in writing to the panel.

2. *First hearing* : the case for the complaining country and defence: the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.

3. *Rebuttals* : the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.

4. *Experts* : if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.

5. *First draft* : the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.

6. *Interim report* : The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.

7. *Review* : The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.

8. *Final report* : The panel's final report should normally be given to the parties to the dispute with-in six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months. A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.

9. *The report becomes a ruling* : The report becomes the Dispute Settlement Body's ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report (and in some cases both sides do).

10. *Appeals* : 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 issues.

Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

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

Question No. 3

Discuss the procedure for Foreign Direct Investment under FDI Policy of India.
(10 marks)

Answer to Question No. 3

Procedure for Foreign Direct Investment

- Foreign Direct Investment in India is governed by FDI Policy issued by the Government of India and Foreign Exchange Management Act, 1999 and Rules and Regulations made there-under.

- An Indian company may receive Foreign Direct Investment under the two routes as given under:

  i) *Automatic Route* : FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities/ sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

  ii) *Government Route* : FDI in activities not covered under the automatic route requires prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, and Ministry of Finance. Application can be made in Form FC-IL, which can be downloaded from http://www.dipp.gov.in. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

- The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank.

- FDI is prohibited under the Government Route as well as the Automatic Route in the following sectors:

  i) Atomic Energy

  ii) Lottery Business

  iii) Gambling and Betting

  iv) Business of Chit Fund

  v) Nidhi Company

  vi) Agricultural (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantations activities (other than Tea Plantations).

  vii) Housing and Real Estate business (except development of townships, construction of residen¬tial/commercial premises, roads or bridges.

viii) Trading in Transferable Development Rights (TDRs).

ix) Manufacture of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

Question No. 4

Prepare a checklist capturing the key points for a company's alliance strategy.
(10 marks)

Answer to Question No. 4

Following checklist captures the key points which organisations should consider for entering and managing strategic alliances:

- Don't get left behind. Alliances are here to stay. They are a permanent part of the corporate finance and corporate-development tool kit.
- Understand the differences between alliances and Merger and Acquisition. Alliances represent a distinctive form of corporate control.
- Understand when they make sense strategically and when they do not.
- Avoid using alliances as a substitute for merger and acquisition.
- Align the company's alliance strategy with corporate strategy. In particular, know the role of alliances in company's growth strategy.
- Alliances are a way to keep options open in order to participate in growth opportunities.
- Spreading the risks of failure among multiple partners, alliances allow a company to limit its downside exposure.
- Actively manage alliance portfolio. Over time, weed out the value destroyers and nurture the successful partnerships.
- Develop a structured alliance process. Be as systematic in selection of partner and negotiation as in the pursuit of a merger or an acquisition.
- Continuously monitor alliance performance on the basis of explicit criteria for performance.
- Ambiguous governance undermines commitment. Ensure that the governance mechanisms are clear.
- Most alliances don't last forever, so have a clear exit strategy.
- Once active portfolio of alliances is in place, it's important to establish a strong capability in alliance management.

Question No. 5

Write short notes on any four of the following:

(a) Global Competitiveness Index

(b) Types of regional trading blocs

(c) Role and objectives of SAFTA

(d) *Implementing Authorities of anti subsidies and countervailing duties in India*

(e) *Warehouse Management Systems.* *(5 marks each)*

Answer to Question No. 5(a)

Global Competitiveness Index

The World Economic Forum releases annual *Global Competitiveness Reports* which studies and benchmarks the many factors underpinning national competitiveness. The goal is to provide insight and stimulate the discussion among all stakeholders on the best strategies and policies to help countries to overcome the obstacles to improving competitiveness. The Global Competitiveness Report series has evolved over the last three decades into the world's most comprehensive assessment of national competitiveness. The Report presents the rankings of the Global Competitiveness Index (GCI), developed by Professor Xavier Sala-i-Martín and introduced in 2005. The GCI is based on 12 pillars of competitiveness, providing a comprehensive picture of the competitiveness landscape in countries around the world at different stages of economic development. The Report contains detailed profiles highlighting competitive strengths and weaknesses for each of the 144 economies featured, as well as an extensive section of data tables displaying relative rankings for more than 100 variables.

Since 2005, the World Economic Forum has based its competitiveness analysis on the **Global Competitiveness Index (GCI)**, a comprehensive tool that measures the microeconomic and macroeconomic foundations of national competitiveness. *Competitiveness has been defined "as the set of institutions, policies, and factors that determine the level of productivity of a country".* The level of productivity, in turn, sets the level of prosperity that can be earned by an economy. The productivity level also determines the rates of return obtained by investments in an economy, which in turn are the fundamental drivers of its growth rates. In other words, a more competitive economy is one that is likely to sustain growth. The concept of competitiveness thus involves static and dynamic components. Although the productivity of a country determines its ability to sustain a high level of income, it is also one of the central determinants of its returns to investment, which is one of the key factors explaining an economy's growth potential.

Answer to Question No. 5(b)

Types of Regional Trading Blocs

Trade blocs can be stand-alone agreements between several states (such as the North American Free Trade Agreement (NAFTA) or part of a regional organization (such as the European Union). Depending on the level of economic integration, trade blocs can fall into six different categories, such as preferential trading areas, free trade areas, customs unions, common markets, economic union and monetary unions , and political union .

Preferential Trade Area : Preferential Trade Areas (PTAs) exist when countries within a geographical region agree to reduce or eliminate tariff barriers on selected goods imported from other members of the area. This is often the first small step towards the creation of a trading bloc.

Free trade area: Free Trade Areas (FTAs) are created when two or more countries in a region agree to reduce or eliminate barriers to trade on all goods coming from other members. This is the most basic form of economic cooperation. Member countries remove all barriers to trade between themselves but are free to independently determine trade policies with nonmember nations. An example is the North American Free Trade Agreement (NAFTA).

Customs union : This type provides for economic cooperation as in a free-trade zone. Barriers to trade are removed between member countries. The primary difference from the free trade area is that members agree to treat trade with non-member countries in a similar manner. A customs union involves the removal of tariff barriers between members, plus the acceptance of a common (unified) external tariff against non-members. This means that members may negotiate as a single bloc with 3rd parties, such as with other trading blocs, or with the WTO. The Gulf Cooperation Council (GCC) Cooperation Council for the Arab States of the Gulf is an example.

Common market : A 'common market' is the first significant step towards full economic integration, and occurs when member countries trade freely in all economic resources – not just tangible goods. This means that all barriers to trade in goods, services, capital, and labor are removed. In addition, as well as removing tariffs, non-tariff barriers are also reduced and eliminated. For a common market to be successful there must also be a significant level of harmonization of micro-economic policies, and common rules regarding monopoly power and other anti-competitive practices. There may also be common policies affecting key industries, such as the Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP) of the European Single Market (ESM). This type allows for the creation of economically integrated markets between member countries. Trade barriers are removed, as are any restrictions on the movement of labor and capital between member countries. Like customs unions, there is a common trade policy for trade with nonmember nations. The primary advantage to workers is that they no longer need a visa or work permit to work in another member country of a common market. An example is the Common Market for Eastern and Southern Africa (COMESA).Common Market for Eastern and Southern Africa

Economic and Monetary union : This type is created when countries enter into an economic agreement to remove barriers to trade and adopt common economic policies. An example is the European Union (EU). Monetary union is a type of trade bloc which is composed of an economic union (common market and customs union) with a monetary union. Monetary union is established through a currency-related trade pact. An intermediate step between pure monetary union and a complete economic integration is the fiscal union. Economic and Monetary Union of the European Union with the Euro for the Euro-zone members is the example of monetary union.

Political union : In order to be successful the more advanced integration steps are typically accompanied by unification of economic policies (tax, social welfare benefits, etc.), reductions in the rest of the trade barriers, introduction of supranational bodies, and gradual moves towards the final stage, a "political union". Political union is the final stage in economic integration with more formal political links between the countries. A limited form of political union may exist when two or more countries share common decision making bodies and have common policies. It is the unification of previously separate nations. The unification of West and East Germany in 1990 is an example of total political union.

Answer to Question No. 5(c)

Roles and Objectives of SAFTA

SAPTA was envisaged primarily as the first step towards the transition to a South Asian Free Trade Area (SAFTA) leading subsequently towards a Customs Union, Common Market and Economic Union.

In 1995, the Sixteenth session of the Council of Ministers (New Delhi, 18-19 December 1995) agreed on the need to strive for the realization of SAFTA and to this end an Inter-Governmental Expert Group (IGEG) was set up in 1996 to identify the necessary steps for progressing to a free trade area.

The Tenth SAARC Summit (Colombo, 29-31 July 1998) decided to set up a Committee of Experts (COE) to draft a comprehensive treaty framework for creating a free trade area within the region, taking into consideration the asymmetries in development within the region and bearing in mind the need to fix realistic and achievable targets.

The SAFTA Agreement was signed on 6 January 2004 during Twelfth SAARC Summit held in Islamabad, Pakistan. The Agreement entered into force on 1 January 2006, and the Trade Liberalization Programme commenced from 1stJuly 2006.

The purpose of SAFTA is to encourage and elevate common contract among the countries such as medium and long term contracts. Contracts involving trade operated by states, supply and import assurance in respect of specific products etc. It involves agreement on tariff concession like national duties concession and non-tariff concession.

The objective of the agreement is to promote good competition in the free trade area and to provide equitable benefits to all the countries involved in the contracts. It aimed to benefit the people of the country by bringing transparency and integrity among the nations. SAFTA was also formed in order to increase the level of trade and economic cooperation among the SAARC nations by reducing the tariff and barriers and also to provide special preference to the Least Developed Countries (LDCs)among the SAARC nations. The basic objective of the agreement is to promote and enhance mutual trade and economic cooperation among member countries. Other objectives are as follows:-

- To eliminate barriers in trade and facilitate cross-border movement of goods between the territories of contracting states.
- To promote conditions of fair competition in the free trade area, and ensure equitable benefits to all contracting states, taking into account their respective levels and pattern of economic development.
- To create effective mechanism for the implementation and application of the agreement for its joint administration and the resolution of disputes.
- To establish a framework for further regional cooperation to expand and enhance the mutual benefits of the agreement.

Answer to Question No. 5(d)

Implementing Authorities in India

- In India the Designated Authority for anti dumping is also the Authority for administering anti subsidy countervailing measures.

- The antidumping & countervailing measures are administered in India by the Directorate General of Anti-dumping and Allied Duties which was set up on 13th April 1998.
- In exercise of the powers conferred by sub-section (7) of section 9 and sub-section (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975) the Central Government had notified Customs Tariff (Identification and Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules,1995.
- Rule 3 provides for the appointment of designated authority by Central Government by notification in the official Gazette. Government may appoint an officer not below the rank of a Joint Secretary to the Government of India or such other officer as it may think fit as the designated authority for the purpose of these rules.
- The Designated Authority is a quasi-judicial authority notified under the Customs Act, 1962. A senior level Joint Secretary and Director, four investigating officers and four costing officers assist the DGAD. Besides, there is a section under the DGAD headed by the Section-Officer to deal with the monitoring and coordination of die functioning of the DGAD.
- The Designated Authority's function is to conduct the anti-dumping and anti-subsidy/ countervailing duty investigations and make recommendations to the Central Government for imposition of anti-dumping or countervailing measures where appropriate.
- These duties are finally imposed/ levied (and collected) by the Department of Revenue, Ministry of Finance through a Notification.
- Thus, while the Directorate General of Anti Dumping and Allied Duties in the Department of Commerce recommends the antidumping/ countervailing duty, it is the Department of Revenue, Ministry of Finance, which actually levies the duties.
- An appeal, if any, against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article lies before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT-formerly known as CEGAT) and thereafter to the Supreme Court of India. However, various High Courts of the country also hear these matters under their writ jurisdiction.
- CSETAT reviews final measures and is independent of administrative authorities. This is consistent with the WTO provision of independent tribunals for appeal against final determination and reviews. No appeal will lie against the preliminary findings of the Authority and the provisional duty imposed on the basis thereof. The appeal to the CEGAT should be filed within 90 days.

Answer to Question No. 5(e)

Warehouse Management Systems

Warehouse Management Systems (WMS) is one of the most significant technologies used for logistics which enables efficient management of material flow, proper tracking of the movement of goods and on-time delivery of goods to customers. WMS is a system to manage the segment of an enterprise's logistics function responsible for the storage and handling of inventories beginning with supplier receipt and ending at the point of consumption. It is a software application that supports the day-to-day operations in a warehouse, by enabling centralised management of tasks such as tracking inventory levels and stock locations. Its primary objective is to manage a warehouse's resources, including space, labour, equipment, tasks and flow of material.

Today, a complete warehouse management system incorporates picking, inventory control, label-printing, return material authorisation (RMA), receiving and automatic data collection (ADC), wave/batch/zone picking, task-interleaving, integration with automated material-handling equipment, cycle-counting, cross-docking, pick-to-carton/pick-to-light, yard management, transport management, labour management and voice-picking, multiple inventory ownership, billing and invoicing and voice-directed distribution and much more.

There are multiple forms of WMS solutions available in market used by Layered Service Providers (LSPs). The need for WMS is completely dependent on the complexity (in terms of size and volume) of warehousing operations and throughput efficiency (in terms of operational productivity):

- For service providers with small godowns in cities or towns storing small amounts of inventory catering to local markets like local distributors and suppliers and whose operations are simple with limited volumes, traditional ways of managing operations and tracking inventory is still the best bet.

- For service providers operating at a regional level who have significantly large operations with considerable volumes like regional distributors, small logistics firms managing inventory for their customers, or replenishment locations for retailers, mini WMS solutions are available that are good in managing inbound and outbound operations and can also manage and track inventory levels. Organisations using various ERPs can also extend their ERP systems and use a WMS module that will help resolve integration challenges. Such solutions can be customised and are also easy on the pocket.

- For service providers running large warehouses and 3PL companies having multiple customers and facilities spread across the nations. These organizations have multitude transactions and inventory movements within and outside their network. For these organizations, WMS systems can manage inbound, outbound, value-added service, work order management, quality checks, picking, packing, shipping are needed. Radio Frequency Identification (RFID) integration, global inventory view, intelligent analytics, Enterprise Resource Planning (ERP) integration etc.

Question No. 6

What are Incoterms? Explain the types and different Incoterms related to export pricing. *(10 marks)*

Answer to Question No. 6

The Incoterms rules are an internationally recognized standard and are used worldwide in international and domestic contracts for the sale of goods. Incoterms are a set of three-letter standard trade terms most commonly used in international contracts for the sale of goods. Incoterms are accepted by governments, legal authorities and practitioners worldwide for the interpretation of the most commonly used terms in international trade. They either reduce or remove altogether uncertainties arising from differing interpretations of such terms in different countries. Incoterms rules provide internationally accepted definitions and rules of interpretation for most common commercial terms. They help traders avoid costly misunderstandings by clarifying the tasks, costs and risks involved in the delivery of goods from sellers to buyers. Incoterms rules are recognized by UNCITRAL as the global standard for the interpretation of the most common terms in foreign trade.

Incoterms were first published in 1936 by the International Chamber of Commerce (ICC). The rules have been developed and maintained by experts and practitioners brought together by ICC and have become the standard in international business rules setting. Incoterms rules are periodically revised to ensure that they are kept up to date with current trade practices. Multiple versions of Incoterms like Incoterms 2000, Incoterms 2010 are available for use by contracting parties. The Incoterms 2010 rules are effective from January 1, 2011. It is recommend using Incoterms 2010 after 2011. However parties can choose earlier version of Incoterms also. But it is important to clearly specify the chosen version of Incoterms.

Rules for any Mode or Modes of Transport

The first class includes the seven Incoterms 2010 rules that can be used irrespective of the mode of transport selected and irrespective of whether one or more than one mode of transport is employed. They can be used even when there is no maritime transport at all. It is important to remember, however, that these rules can be used in cases where a ship is used for part of the carriage. Different Incoterms related to export pricing are given below:

1. *EXW – EX WORKS (… named place of delivery)*

   The Seller's only responsibility is to make the goods available at the Seller's premises. The Buyer bears full costs nd risks of moving the goods from there to destination.

2. *FCA – FREE CARRIER (… named place of delivery)*

   The Seller delivers the goods, cleared for export, to the carrier selected by the Buyer. The Seller loads the goods if the carrier pickup is at the Seller's premises. From that point, the Buyer bears the costs and risks of moving the goods to destination.

3. *CPT – CARRIAGE PAID TO (… named place of destination)*

   The Seller pays for moving the goods to destination. From the time the goods are transferred to the first carrier, the Buyer bears the risks of loss or damage.

4. *CIP– CARRIAGE AND INSURANCE PAID TO (… named place of destination)*

   The Seller pays for moving the goods to destination. From the time the goods are transferred to the first carrier, the Buyer bears the risks of loss or damage. The Seller, however, purchases the cargo insurance.

5. *DAT – DELIVERED AT TERMINAL (… named terminal at port or place of destination)*

   The Seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the Buyer's disposal at a named terminal at the named port or place of destination. "Terminal" includes any place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The Seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

6. *DAP – DELIVERED AT PLACE (… named place of destination)*

   The Seller delivers when the goods are placed at the Buyer's disposal on the arriving means of transport ready for unloading at the names place of destination. The Seller bears all risks involved in bringing the goods to the named place.

7. *DDP – DELIVERED DUTY PAID (… named place)*

   The Seller delivers the goods -cleared for import – to the Buyer at destination. The Seller bears all costs and risks of moving the goods to destination, including the payment of Customs duties and taxes.

Rules for Sea and Inland Waterway Transport

In the second class of Incoterms 2010 rules, the point of delivery and the place to which the goods are carried to the buyer are both ports, hence the label "sea and inland waterway" rules. FAS, FOB, CFR and CIF belong to this class. The last three Incoterms rules consider the goods being delivered when they are "on board" on the vessel. The ship's rail as the point of delivery has been omitted in these rules which more closely reflects modern commercial reality and avoids the rather dated image of the risk of transfer.

FAS – FREE ALONGSIDE SHIP (… named port of shipment)

The Seller delivers the goods to the origin port. From that point, the Buyer bears all costs and risks of loss or damage.

FOB– FREE ON BOARD (… named port of shipment)

The Seller delivers the goods on board the ship and clears the goods for export. From that point, the Buyer bears all costs and risks of loss or damage.

CFR– COST AND FREIGHT (… named port of destination)

The Seller clears the goods for export and pays the costs of moving the goods to destination. The Buyer bears all risks of loss or damage.

CIF – COST INSURANCE AND FREIGHT (… named port of destination)

The Seller clears the goods for export and pays the costs of moving the goods to the port of destination. The Buyer bears all risks of loss or damage. The Seller, however, purchases the cargo insurance.

Question No. 7

Answer any six questions from the following.

(a) What are the drivers of international business?

(b) Write a short note on recent trends in FDI in India.

(c) *Discuss the institutional structure of WTO.*

(d) *What are the benefits and problems of strategic alliances?*

(e) *Explain the role of ministry of commerce in promotion of exports in India.*

(f) *Is registration of exporters compulsory? Explain the process of registering exporters with different authorities.*

(g) *What are the different modes of transport available? Explain their advantages and disadvantages.* *(5 marks each)*

Answer to Question No. 7(a)

Drivers of International Business

1. *Higher Rate of Profits* : The basic objective of business is to achieve profits. When the domestic markets do not promise a higher rate of profits, business firms search for foreign markets that hold promise for higher rate of profits. Thus the objective of profit affects and motivates the business to expand operations to foreign countries. For example, Hewlett Packard in the USA earned 86.2% of its profits from the foreign markets compared to that of domestic markets in 2007. Apple earned US $ 730 million as net profit from the foreign markets and only US $ 620 million as net profit from its domestic market in 2007.
2. *Expanding the Production Capacities beyond the Demand of the Domestic Country* : Some of the domestic companies expand their production capacities more than the demand for the product in domestic countries. These companies, in such cases, are forced to sell their excess production in foreign developed countries. Toyota of Japan is an example.
3. *Limited Home Market* : When the size of the home market is limited either due to the smaller size of the population or due to lower purchasing power of the people or both, the companies internationalize their operations. For example, most of the Japanese automobiles and electronic firms entered the USA, Europe and even African markets due to smaller size of the home market. Similarly, the mere six million population of Switzerland is the reason for Ciba-Geigy to internationalize its operations. ITC entered the European market due to the lower purchasing power of the Indians with regard to high quality cigarettes.
4. *Political Stability* vs. *Political Instability* : Political stability does not simply mean that continuation of the same party in power, but it does mean that continuation of the same policies of the Government for a quite longer period. It is viewed that the USA is a politically stable country; countries like the UK, France, Germany, Italy and Japan are also politically stable. Most of the African countries and some of the Asian countries are politically instable countries. Business firms prefer to enter politically stable countries and are restrained from locating their business operations in politically instable countries. In fact, business firms shift their operations from politically instable countries to politically stable countries.
5. *Availability of Technology and Competent Human Resources* : Availability of advanced echnology and competent human resources in some countries act as

pulling factors for business firms from the home country. The developed countries due to these reasons attract companies from the developing world. In fact, American and European companies, in recent years, depended on Indian companies for software products and services through their business process outsourcing (BPO). This is because the cost of professionals in India is 10 to 15 times less compared to the US and European labour markets.

6. *High Cost of Transportation* : Initially companies enter foreign countries for their marketing operations. But the home companies in any country enjoy higher profit margins as compared to the foreign firms on account of the cost of transportation of the products. Under such conditions, the foreign companies are inclined to increase their profit margin by locating their manufacturing facilities in foreign countries through the Foreign Direct Investment (FDI) route to satisfy the demand of either one country or a group of neighbouring countries. For example, Mobil which was supplying petroleum products to Ethiopia, Kenya, Eritrea, Sudan etc., from its refineries in Saudi Arabia, it established its refinery facilities in Eritrea in order to reduce the cost of transportation.

7. *Nearness to Raw Materials* : The source of highly qualitative raw materials and bulk raw materials is a major factor for attracting the companies from various foreign countries. For example Vedanta Resources is a London Stock Exchange (LSE) listed UK based company operating principally in India due to availability of raw materials such as iron ore, copper, zinc and lead. It also has substantial operations in Zambia and Australia where ample copper is available.

8. *Liberalisation and Globalisation* : Most of the countries in the globe liberalized their economies and opened their countries to the rest of the globe. These change in policies attracted multinational companies to extend their operations to these countries.

9. *To Increase Market Share* : Some of the large-scale business firms would like to enhance their market share in the global market by expanding and intensifying their operations in various foreign countries. Companies that expand internally tend to be ‘oligopolistic’. Smaller companies expand internationally for survival while the larger companies expand to increase their market share. For example Ball Corporation, the third largest beverage can manufacturer in the USA, bought the European packaging operations of Continental Can Company. Then it expanded its operations to Europe and met the European demand which is 200 per cent more than that of the USA. Thus, it increased its global market share of soft drink cans.

Answer to Question No. 7(b)

'Indian economy is capable of absorbing US$ 50 billion in foreign direct investment (FDI) per year. FDI is an economic segment that enjoys intense focus and attention from policy makers of the highest rank in the administration. The Government relaxed FDI regime in sectors including multi-brand retail, single-brand retail, commodity exchanges, power exchanges, broadcasting, non-banking financial institutions (NBFCs) and asset reconstruction companies (ARCs) in 2012.

There were several big-bang reforms and the Government allowed 51 per cent FDI in multi-brand retail and 49 per cent in the aviation sector. FDI cap was also raised from 49 per cent to 74 per cent in broadcasting and ARCs, with an aim to bring foreign expertise in the segments. Foreign investment has also been allowed in power exchanges while foreign institutional investors (FIIs) have been allowed to invest up to 23 per cent in commodity exchanges without seeking prior approval from the Government. Thus, reforms and policies at such a massive level indicate that Indian FDI landscape offers a plethora of opportunities to foreign investors as the economy is booming and vibrant as compared to its global peers. Furthermore, favourable demographics and growth opportunities keep India an 'attractive' destination for merger and acquisition (M&A) activities across diverse sectors including consumer goods and pharmaceuticals.

Key Statistics

- India received FDI worth US$ 30.82 billion during April-January 2012-13 while FDI equity inflows during January 2013 stood at US$ 2.16 billion, according to latest data released by the Department of Industrial Policy and Promotion (DIPP).
- The sectors which have received high level of FDI during the first ten months of 2012-13 include services (US$ 4.66 billion), construction (US$ 1.21 billion), drugs & pharmaceuticals (US$ 1 billion), hotel and tourism (US$ 3.19 billion), metallurgical industries (US$ 1.38 billion) and automobile (US$ 895 million)
- Country wise, high levels of FDI came during the period from Mauritius (US$ 8.17 billion), Singapore (US$ 1.82 billion), the UK (US$ 1.05 billion), Japan (US$ 1.69 billion) and the Netherlands (US$ 1.52 billion), showed the DIPP data.
- The value of M&A deals in India stood at US$ 4.5 billion in the March 2013 quarter, according to Thomson Reuters' India M&A First Quarter 2013 Review. Meanwhile, there were 90 private equity (PE) deals valuing US$ 1.04 billion during January-March 2013 quarter, reveal data from Four-S Services.
- India's foreign exchange (forex) reserves stood at US$ 292.64 billion for the week ended March 29, 2013, according to data released by the Central Bank. The value of foreign currency assets (FCA) - the biggest component of the forex reserves – stood at US$ 259.72 billion, according to the weekly statistical supplement released by the Reserve Bank of India (RBI).

Trends in India's Foreign Direct Investment (FDI) are an endorsement of its status as a preferred investment destination amongst global investors.

Answer to Question No. 7(c)

The WTO has 153 members, accounting for over 97% of world trade. Around 30 others are negotiating membership. Decisions are made by the entire membership. This is typically by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT). The WTO's agreements have been ratified in all members' parliaments. The WTO's top level decision-making body is the Ministerial Conference which meets at least once every two years.

Below this is the General Council (normally ambassadors and heads of delegation in Geneva, but sometimes officials sent from members' capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Dispute Settlement Body. At the next level, the Goods Council, Services Council and the Intellectual Property (TRIPS) Council report to the General Council.

Numerous specialized committees and working groups and working parties deal with the individual agreements and other areas such as the environment, development, membership applications and regional trade agreements.

All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees.

Answer to Question No. 7(d)

Strategic alliances can take a variety of forms, ranging from an arm's-length contract to a joint venture. But the core of a strategic alliance is an inter-firm co-operative relationship that enhances the effectiveness of the competitive strategies of the participating firms by the trading of mutually beneficial resources such as technologies, skills, etc. Strategic alliances encompass a wide range of inter-firm linkages, including joint ventures, minority equity investments, equity swaps, joint research and development, joint manufacturing, joint marketing, long-term sourcing agreements, shared distribution/services and standards-setting. However, mergers and acquisitions, overseas subsidiaries of multinational corporations, and franchising agreements are not classified as strategic alliances, since they do not involve independent firms with separate goals or call for continuous contribution of participating firms such as transfer of technology or skills between partners.

Advantages of Strategic Alliances

There are many specific advantages of a global strategic alliance.

- Instant market access, or at least speed your entry into a new market.
- Exploit new opportunities to strengthen your position in a market where you already have a foothold.
- Increase sales.
- Gain new skills and technology.
- Develop new products at a profit.
- Share fixed costs and resources.
- Enlarge distribution channels.
- Broaden business and political contact base.
- Gain greater knowledge of international customs and culture.
- Enhance image in the world marketplace.

Disadvantages of Strategic Alliances

There are also some disadvantages of strategic alliances which organisations must consider:

- Weaker management involvement or less equity stake.
- Fear of market insulation due to local partner's presence.

- Less efficient communication.
- Poor resource allocation.
- Difficult to keep objectives on target over time.
- Loss of control over such important issues as product quality, operating costs, employees, etc.

Answer to Question No. 7(e)

Ministry of Commerce

The Department of Commerce, Government of India is the most important organ concerned with the regulation, development and promotion of India's international trade and commerce through formulation of appropriate international trade & commercial policy and implementation of the various provisions thereof. The basic role of the Department is to facilitate the creation of an enabling environment and infrastructure for accelerated growth of international trade. The Department formulates, implements and monitors the Foreign Trade Policy (FTP) which provides the basic framework of policy and strategy to be followed for promoting exports and trade. The Trade Policy is periodically reviewed to incorporate changes necessary to take care of emerging economic scenarios both in the domestic and international economy. Besides, the Department is also entrusted with responsibilities relating to multilateral and bilateral commercial relations, Special Economic Zones, state trading, export promotion and trade facilitation, and development and regulation of certain export oriented industries and commodities.

The Department is headed by a Secretary who is assisted by an Additional Secretary & Financial Adviser, three Additional Secretaries, thirteen Joint Secretaries and Joint Secretary level officers and a number of other senior officers. Keeping in view the large increase in workload in matters related to the World Trade Organization (WTO), Regional Trade Agreements (RTAs), Free Trade Agreements (FTAs), Special Economic Zones (SEZs), Joint Study Groups (JSGs) etc, two posts each of Joint Secretaries and Directors were created in the Department during 2008-09.

Answer to Question No. 7(f)

Registration of Exporters

An exporting organisation must get registered with the various government authorities before it starts to export. Registration is compulsory to obtain various benefits under the Law.

Registration with Reserve Bank of India (RBI) : Prior to 1997, it was necessary for every first time exporter to obtain IEC number from Reserve Bank of India (RBI) before engaging in any kind of export operations. But now this is being done by DGFT.

Registration with Director General of Foreign Trade (DGFT) : For every first time exporter, it is necessary to get registered with the DGFT (Director General of Foreign Trade), Ministry of Commerce, Government of India. DGFT provide exporter a unique IEC Number. IEC Number is a ten digits code required for the purpose of export as well as import. Detail procedure of obtaining IEC Code is given in following pages.

Registration with Export Promotion Council : Registered under the Indian Company

Act, Export Promotion Councils or EPC is a non-profit organisation for the promotion of various goods exported from India in international market. EPC works in close association with the Ministry of Commerce and Industry, Government of India and act as a platform for interaction between the exporting community and the government. So, it becomes important for an exporter to obtain a Registration cum Membership Certificate (RCMC) from the EPC. An application for registration should be accompanied by a self certified copy of the IEC number. Membership fee should be paid in the form of cheque or draft after ascertaining the amount from the concerned EPC. The RCMC certificate is valid from 1st April of the licensing year in which it was issued and shall be valid for five years ending 31st March of the licensing year, unless otherwise specified.

Registration with Commodity Boards : Commodity Board is registered agency designated by the Ministry of Commerce, Government of India for purposes of export-promotion and has offices in India and abroad. At present, there are five statutory Commodity Boards under the Department of Commerce. These Boards are responsible for production, development and export of tea, coffee, rubber, spices and tobacco.

Registration with Income Tax Authorities : Goods exported out of the country are eligible for exemption from both Value Added Tax and Central Sales Tax. So, to get the benefit of tax exemption it is important for an exporter to get registered with the Tax Authorities.

Answer to Question No. 7(g)

Types of Transport Modes

Rail, road, air, water and pipeline are the five modes of transportation used by logistics management to transport material from one place to another. Each of these modes has some advantages and some limitations. A logistics expert needs to understand these and based on priorities, product type, lead time, etc. decide the appropriate mode of transportation.

AIR

This mode of transportation is usually used for the delivery of goods from distant suppliers, usually the ones that are not connected by any other mode of transportation. This mode of transport is useful to delivery products with short lead times, fragile goods and products that are not bulky. Also the products that are in high demand and in short supply are also at times air freighted in order to meet customer demands. The bulk/ value ratio will be a determining factor.

Advantages

(i) Fast delivery, usually between 24 and 48 hours

(ii) Faster fulfillment of customer orders

(iii) Ideal for perishable and other products with short life

(iv) Reduced lead time on supplier

(v) Lesser inventory

(vi) Improved service levels.

Disadvantages

(i) Flight delay and/or cancellations especially when direct connections are not available.

(ii) Customs and excise formalities leading to delays.

(iii) High cost.

(iv) Suppliers/customers are not always located near a rail freight depot and delivery to/from the depot can be costly and time consuming.

Sea

Sea transportation is used by businesses for the delivery of goods from distant suppliers. Most sea transportation is conducted in containers which vary in size. Goods can be grouped into a container (LCL) or fill a container (FCL). Sea tankers are used for bulk shipments of loose goods such s oil, grain and coal.

Advantages

(i) Ideal for transporting heavy and bulky goods

(ii) Suitable for products with long lead times.

Disadvantages

(i) Longer lead/delivery times.

(ii) Problems arising due to bad weather.

(iii) Difficult to monitor exact location of goods in transit.

(iv) Customs and excise restrictions.

(v) High cost.

(vi) Suppliers/customers are not always located near a rail freight depot and delivery to/from the depot can be costly and time consuming.

Rail

Rail transportation is popular with businesses for the delivery of a wide range of goods including post, coal, steel and other heavy goods.

Advantages

(i) Faster and quicker.

(ii) Ability to carry high capacity.

(iii) Cost effective.

(iv) Safe mode of transport.

(v) Reliable.

Disadvantages

(i) Subject to unforeseen delays and/or accidents.

(ii) Completely governed by timetable and schedule of railways.

(iii) Suppliers/customers are not always located near a rail freight depot and delivery to/from the depot can be costly and time consuming.

Road

A very popular mode of transport used by suppliers and businesses to deliver orders. Many transport companies provide scheduled delivery days and next day delivery services, depending upon your needs. Goods can be packed/grouped in box vans or in containers which are also used for sea transportation.

Advantages

(i) Cost effective.

(ii) Fast delivery

(iii) Ideal for any short distances

(iv) Refrigerated vans can be easily used for transporting perishables.

(v) Easy to monitor location of goods.

(vi) Mass movement of goods

(vii) Point-to-point service.

(viii) Easy to communicate with driver. Usually companies ask the driver to call the company every couple of hours.

Disadvantages

(i) Delays due to traffic jams, octroi snarls, etc.

(ii) Problems due to vehicle breakdown, accidents, etc.

(iii) Goods susceptible to damage and losing quality.

(iv) Heavy dependability on weather.

Pipeline

Advantages

(i) Mass movement of liquids and gases

(ii) Low operating costs.

Disadvantages

(i) Limited applicability

(ii) Not widespread.

TEST PAPER 3/2013

Time allowed : 3 hours *Max. Marks : 100*

NOTE *: Answer ALL Questions.*

Question No. 1

Getting custom clearance is a tough task in India. Explain the process of getting custom clearance in India. *(10 marks)*

Answer to Question No. 1

Customs Procedure for Export

In India custom clearance is a complex and time taking procedure that every export face in his export business. Physical control is still the basis of custom clearance in India where each consignment is manually examined in order to impose various types of export duties. High import tariffs and multiplicity of exemptions and export promotion schemes also contribute in complicating the documentation and procedures. So, a proper knowledge of the custom rules and regulation becomes important for the exporter. For clearance of export goods, the exporter or export agent has to undertake the following formalities:

Registration : Any exporter who wants to export his good need to obtain PAN based Business Identification Number (BIN) from the Directorate General of Foreign Trade prior to filing of shipping bill for clearance of export goods. The exporters must also register themselves to the authorised foreign exchange dealer code and open a current account in the designated bank for credit of any drawback incentive.

Registration in the case of export under export promotion schemes: All the exporters intending to export under the export promotion scheme need to get their licences / DEEC book etc.

Processing of Shipping Bill - Non-EDI : In case of Non-EDI, the shipping bills or bills of export are required to be filled in the format as prescribed in the Shipping Bill and Bill of Export (Form) regulations, 1991. An exporter need to apply different forms of shipping bill/ bill of export for export of duty free goods, export of dutiable goods and export under drawback etc.

Processing of Shipping Bill - EDI : Under EDI System, declarations in prescribed format are to be filed through the Service Centers of Customs. A checklist is generated for verification of data by the exporter/CHA. After verification, the data is submitted to the System by the Service Center operator and the System generates a Shipping Bill Number, which is endorsed on the printed checklist and returned to the exporter/CHA. For export items which are subject to export cess, the TR-6 challans for cess is printed and given by the Service Center to the exporter/CHA immediately after submission of shipping bill. The cess can be paid on the strength of the challan at the designated bank. No copy of shipping bill is made available to exporter/CHA at this stage.

Quota Allocation : The quota allocation label is required to be pasted on the export invoice. The allocation number of AEPC (Apparel Export Promotion Council) is to be entered in the system at the time of shipping bill entry. The quota certification of export invoice needs to be submitted to Customs along-with other original documents at the time of examination of the export cargo. For determining the validity date of the quota, the relevant date needs to be the date on which the full consignment is presented to the Customs for examination and duly recorded in the Computer System.

Arrival of Goods at Docks : On the basis of examination and inspection goods are allowed enter into the Dock. At this stage the port authorities check the quantity of the goods with the documents.

System Appraisal of Shipping Bills : In most of the cases, a Shipping Bill is processed by the system on the basis of declarations made by the exporters without any human intervention. Sometimes the Shipping Bill is also processed on screen by the Customs Officer.

Customs Examination of Export Cargo : Customs Officer may verify the quantity of the goods actually received and enter into the system and thereafter mark the Electronic Shipping Bill and also hand over all original documents to the Dock Appraiser of the Dock who many assign a Customs Officer for the examination and intimate the officers' name and the packages to be examined, if any, on the check list and return it to the exporter or his agent. The Customs Officer may inspect/examine the shipment along with the Dock Appraiser. The Customs Officer enters the examination report in the system. He then marks the Electronic Bill along with all original documents and check list to the Dock Appraiser. If the Dock Appraiser is satisfied that the particulars entered in the system conform to the description given in the original documents and as seen in the physical examination, he may proceed to allow "let export" for the shipment and inform the exporter or his agent.

Stuffing / Loading of Goods in Containers : The exporter or export agent hand over the exporter's copy of the shipping bill signed by the Appraiser "Let Export" to the steamer agent. The agent then approaches the proper officer for allowing the shipment. The Customs Preventive Officer supervising the loading of container and general cargo in to the vessel may give "Shipped on Board" approval on the exporter's copy of the shipping bill.

Drawal of Samples : Where the Appraiser Dock (export) orders for samples to be drawn and tested, the Customs Officer may proceed to draw two samples from the consignment and enter the particulars thereof along with details of the testing agency in the ICES/E system. There is no separate register for recording dates of samples drawn. Three copies of the test memo are prepared by the Customs Officer and are signed by the Customs Officer and Appraising Officer on behalf of Customs and the exporter or his agent. The disposal of the three copies of the test memo is as follows:-

— Original – to be sent along with the sample to the test agency.

— Duplicate – Customs copy to be retained with the 2nd sample.

— Triplicate – Exporter's copy.

The Assistant Commissioner/Deputy Commissioner if he considers necessary, may also order for sample to be drawn for purpose other than testing such as visual inspection and verification of description, market value inquiry, etc.

Amendments : Any correction/amendments in the check list generated after filing of declaration can be made at the service center, if the documents have not yet been submitted in the system and the shipping bill number has not been generated. In situations, where corrections are required to be made after the generation of the shipping bill number or after the goods have been brought into the Export Dock, amendments is carried out in the following manners.

1. The goods have not yet been allowed "let export" amendments may be permitted by the Assistant Commissioner (Exports).
2. Where the "Let Export" order has already been given, amendments may be permitted only by the Additional/Joint Commissioner, Custom House, in charge of export section.

In both the cases, after the permission for amendments has been granted, the Assistant Commissioner / Deputy Commissioner (Export) may approve the amendments on the system on behalf of the Additional /Joint Commissioner. Where the print out of the Shipping Bill has already been generated, the exporter may first surrender all copies of the shipping bill to the Dock Appraiser for cancellation before amendment is approved on the system.

Export of Goods under Claim for Drawback : After actual export of the goods, the Drawback claim is processed through EDI system by the officers of Drawback Branch on first come first served basis without feeling any separate form.

Generation of Shipping Bills : The Shipping Bill is generated by the system in two copies- one as Custom copy and one as exporter copy. Both the copies are then signed by the Custom officer and the Custom House Agent.

Question No. 2

Briefly explain the process of forming foreign technology collaborations in India.
(10 marks)

Answer to Question No. 2

Foreign Technology or Technical Collaborations in india

Foreign Technology or Technical Collaborations generally cover transfer of the following:

- Process know-how
- Design know-how
- Engineering know-how
- Manufacturing know-how
- Application know-how

- Technology know-how
- Management know-how

Foreign technology collaborations are permitted either through the automatic route under delegated powers exercised by the Reserve Bank of India (RBI) or by the Government.

Automatic Route : The Reserve Bank of India, through its regional offices, accords automatic approval to all industries for foreign technology collaboration agreements subject to

- the lump sum payments not exceeding US $ 2 Million;
- royalty payable being limited to 5 per cent for domestic sales and 8 per cent for exports, subject to a total payment of 8 per cent on sales over a 10 year period; and
- the period for payment of royalty not exceeding 7 years from the date of commencement of commercial production, or 10 years from the date of agreement, whichever is earlier. These royalty limits are net of taxes and are calculated according to standard conditions.

For foreign technology agreements in respect of hotel and tourism related industries, automatic approval is granted if

- upto 3% of the capital cost of the project is proposed to be paid for technical and consultancy services including fees for architecture, design, supervision, etc.;
- upto 3% of the net turnover is payable for franchising and marketing/publicity support fee, and
- upto 10% of gross operating profit is payable for management fee, including incentive fee.

Government Route : For the following categories, Government approval would be necessary:

- proposals attracting compulsory licensing;
- items of manufacture reserved for the small scale sector;
- proposals involving any previous joint venture, or technology transfer/trademark agreement in the same or allied field in India. The definition of “same” and allied field would be as per 4 digit NIC 1987 Code and 3 digit NIC 1987 Code;
- extension of foreign technology collaboration agreements (including those cases which may have received automatic approval in the first instance);
- proposals not meeting any or all of the parameters for automatic approval as given above.

Procedures for Approvals

Procedure for Automatic Approval : Applications for automatic approval for such foreign technology agreements should be submitted in Form FT (RBI) with the concerned

Regional Offices of Reserve Bank of India. No fee is payable. Approvals are given within 2 weeks.

Procedure for Government Approval : All other proposals for foreign technology agreement, not meeting any or all of the parameters for automatic approval, and all cases of extension of existing foreign technical collaboration agreement, are considered for approval, on merits, by the Government. Application in respect of such proposals should be submitted in Form FC-IL to the Secretariat for Industrial Assistance, Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi. No fee is payable. The following information should form part of the proposals submitted to SIA:

- Whether the applicant has had or has any previous financial/technical collaboration or trade mark agreement in India in the same or allied field for which approval has been sought; and
- If so, details thereof and the justifications for proposing the new venture/technical collaboration (including trade marks).

On consideration of the proposal by the Project Approval Board/FIPB, decisions are normally conveyed within 4 to 6 weeks of filing the application. When a collaboration is approved by the Reserve Bank or the Government of India (as the case may be), a letter of approval is issued indicating the terms and conditions of the approval, a copy of which is issued to the designated branch of an authorized dealer (bank as mentioned in the application).

A registration number is granted by Reserve Bank when an approval is accorded for foreign technical collaboration under the Automatic Route. When the approval is granted by the Government, the Indian company should obtain a registration number for the collaboration agreement from the concerned regional office of Reserve Bank.

The Indian company which has obtained approval for the foreign technical collaboration agreement should file a copy of the agreement with the designated branch of the authorized dealer (bank) through whom remittances falling due under the collaboration agreement would be made.

Remittances under the agreement can be made only after a registration number has been granted by Reserve Bank.

Question No. 3

How is normal value of goods determined ? Explain citing some of the recent cases in India. *(10 marks)*

Answer to Question No. 3

Normal Value : 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.

If the normal value can not be determined by means of the domestic sales, the following two alternative methods may be employed to determine the normal value: -

— Comparable representative export price to an appropriate third country.

— Constructed normal value, i.e. the cost of production in the country of origin with reasonable addition for administrative, selling and general costs and reasonable profits.

Export price : The Export price of the goods allegedly dumped into India means the price at which it is exported to India. It is generally the CIF value minus the adjustments on account of ocean freight, insurance, commission, etc. so as to arrive at the value at ex-factory level.

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.

Margin of Dumping : The margin of dumping is the difference between the Normal value and the export price of the goods under complaint. It is generally expressed as a percentage of the export price.

Illustration : Normal value US$ 110 per kg. Export price US$ 100 per kg.

There is dumping in this case as export price is lower than normal value and dumping margin in this case is US$ 10 per kg., i.e. 10% of the export price.

Factors Affecting Comparison of Normal Value and Export Price : 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

— Conditions and terms of sale

It must be noted that the above factors are only indicative and any factor which can be demonstrated to affect the price comparability, is considered by the Authority.

In the Hot Rolled Coils case — India [2000 (116) E.L.T. 356 (Tribunal)], with regard to the normal value, the Hon'ble Tribunal observed that Clause (c) of Section 9A defines normal value. Sub-clause (i) of Clause (c) states that normal value means the comparable price in the ordinary curse of trade for the like article meant for consumption in the exporting country or territory as determined in accordance with the Rules. The comparable price in the ordinary course of trade mentioned in this sub-clause can only be the comparable price for the like article manufactured by the same exporter against whom investigation is undertaken by the Designated Authority. Price of the like article of any other manufacturer cannot be the basis for finding out the normal value for assessing the dumping margin or normal value. When such comparable price for the like article of the same manufacturer is not available, then sub-clause (ii) of Clause (c) comes into operation. This sub-clause contains two alternatives. The first alternative is comparable representative price of the like article when exported from the exporting country or territory to an appropriate country. When particular manufacturer/exporter who is stated to be dumping his produce in India has no sales of like article in the domestic market, then the representative price of that article when he exports to an appropriate country, can be the basis for finding the normal value. Normal value of the article can also be assessed as per the second alternative provided therein, namely, the cost of production of the article in the country of origin along with reasonable addition for administrative selling and general cost and for profits.

Qustion No. 4

Discuss international commercial arbitration as an important tool of dispute settlement in foreign collaborations. *(10 marks)*

Answer to Question No. 4

International Commercial Arbitration

Introduction

Whenever two or more parties have a dispute, it would be preferable if they were able to discuss it between themselves and to arrive at a peaceful solution. That is true whether the parties are members of a family, States or commercial entities. Only the parties themselves can achieve a solution that will not only resolve the dispute, but will facilitate a useful future relationship. However, sometimes the parties are not interested in any future relationship and only want the dispute to be settled, preferably on their own terms. That may lead to war or its private equivalents. Even when they are interested in a peaceful settlement of the dispute, it is not infrequent that the parties are not able to discuss – or negotiate – a mutually agreeable solution. In such a situation the aid of a third party must be sought. The State offers one form of third party settlement of private disputes by maintaining a court system in which they can be litigated. Most private disputes that require the services of a third party are settled by litigation, though many of them are settled directly between the parties once the litigation has begun. It is also possible for the parties to involve third persons in a private capacity to solve, or to help them solve, the dispute. Arbitration is the more prominent of the private dispute settlement mechanisms, both domestically and for international commercial relations. “International Commercial Arbitration” is a particular means of settling disputes, i.e. by “arbitration” that is “commercial” in nature and has some international element to it. The term has been explained in detail in following paragraphs.

International

In the UNCITRAL Model Law on International Commercial Arbitration, arbitration is international if any one of four different situations is present:

1) The parties to the arbitration agreement have, at the time of the conclusion of the agreement, their places of business in different States. This rule is then modified to provide that “If a party has more than one place of business, the place of business for determining whether the arbitration is international is that which has the closest relationship to the arbitration agreement.” Therefore, under this provision, if the local office in State A of a multinational company from

State B enters into a contract with a company from State A calling for arbitration in State A, the arbitration would not be international in State A.

2) The place of arbitration, if determined in or pursuant to, the arbitration agreement, is situated outside the State in which the parties have their places of business. Under this provision two parties from State A might agree to arbitrate in State B. If State B had adopted the Model Law, the arbitration would be international in State B.

3) Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected is situated outside the State in which the parties have their places of business. Under this provision arbitration in State A between two parties from State A in regard to a construction project situated in State B would be an international arbitration.

4) The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

Commercial

The term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.

Arbitration

It is not defined in the UNCITRAL Model Law on International Commercial Arbitration. However it has following principal characteristics.

1. *Arbitration is a mechanism for the settlement of disputes* : If there is no dispute, there can be no arbitration. The issue arises most often when one party fails to pay a sum of money owed to the other, perhaps in the form of a negotiable instrument, and the debtor does not dispute the obligation. If there is an existing arbitration clause, the creditor can or must invoke the arbitration clause or, there being no dispute as to the existence of the obligation, the creditor can seek enforcement of the obligation by court action. The question of settlement might also arise if it appears that the parties agreed to arbitration in order to secure an enforceable award.

2. *Arbitration is consensual* : arbitration must be founded on the agreement of the parties. Not only does this mean that they must have consented to arbitrate the dispute that has arisen between them, it also means that the authority of the arbitral tribunal is limited to that which the parties have agreed. Consequently, the award rendered by the tribunal must settle the dispute that was submitted to it and must not pronounce on any issues or other disputes that may have arisen between the parties.

3. *Arbitration is a private procedure* : Arbitration is not part of the State system of courts. It is a consensual procedure based on the agreement of the parties. Nevertheless, it fulfils the same function as litigation in the State court system. The end result is an award that is enforceable by the courts, usually following the same or similar procedure as the enforcement of a court judgment. Consequently, the State has an interest in the conduct of arbitration beyond the interest it has in the settlement of disputes by other procedures that are also alternatives to litigation.

4. *Arbitration leads to a final and binding determination of the rights and obligations of the parties* : Many arbitration rules, such as ICC Arbitration Rule 28(6), specifically provide that "Every Award shall be binding on the parties. By submitting the dispute to arbitration under these Rules, the parties undertake to carry out any Award without delay".

Benefits of International Commercial Arbitration

1. *Avoids litigating in foreign court* : The most favorable situation for a party to a dispute in an international commercial transaction is to litigate in one's own courts. Even if the courts are scrupulously unbiased, that party is litigating at home using its regular lawyers, following a familiar procedure and in its own language. While that is good for one party to the transaction, it is not so good for the other party who faces all the difficulties of litigating in an unfamiliar procedure, in a language that may be foreign and may not be the language of the contract, and not being able to use its lawyers who are familiar with the company. It is also not irrelevant that the one party is staying at home while the other party is staying in a foreign country with all the inconvenience and expense that entails.
2. *Arbitration reduces inequalities* : Arbitration of such disputes is a means to reduce the inequalities. While it is possible for the arbitration to take place in an arbitration organization located in the home country of one or the other party, it is also possible for the arbitration to be administered by an arbitration organization located in a third country. Furthermore, many arbitration organizations will administer arbitrations throughout the world. There is active competition among leading arbitration organizations to offer their services worldwide. An interesting example is provided by the American Arbitration Association. It has a long and distinguished history as a provider of domestic arbitration services. In order to reduce any image of partiality that might be conveyed by its name, it offers its services as a provider of arbitration services for international disputes through its International Center for Dispute Resolution, which has a European office in Dublin, Ireland.
3. *Reduces chances of partiality of the courts when State is party* : There are special concerns about the partiality of the courts when the State is a party to the dispute. The State has too many means to influence decisions in its own courts for foreigners to feel comfortable litigating against it there. The same might be said about arbitrating against the State in an arbitration organization located in that State. This factor is the major reason for the extraordinary increase in the number of bilateral investment treaties in recent years in which foreign investors have the option of instituting arbitration in one of several arbitration forums outside the host State.

4. *Ease of enforcement* : A final reason for the current popularity of international commercial arbitration is the comparative ease of enforcement of an award as compared to the enforcement of a judgment of a foreign court. Unless there is a treaty between the State in which the judgment was issued and the State in which enforcement is sought, the requested court is under no international obligation to enforce the judgment. While there a number of bilateral treaties for the enforcement of judgments.

Question No. 5

Write short notes on :

(a) Mercantilism

(b) Types of Strategic Alliance

(c) Margin of Dumping

(d) PEST Analysis *(5 marks each)*

Answer to Question No. 5(a)

Mercantilism

The first reasonably systematic body of thought devoted to international trade is called “mercantilism” and it emerged in seventeenth and eighteenth century in Europe. An outpouring of pamphlets on economic issues, particularly in England and especially related to trade, began during this time. The doctrine of mercantilism had many modern features like it was very nationalistic and favored its own nation to be of prime importance. It generally viewed foreign trade with a suspicion.

The mercantilist writers argued that a key objective of trade should be to promote a favorable balance of trade. A “favorable” balance of trade is one in which the value of domestic goods exported exceeds the value of foreign goods imported. Trade with a given country or region was judged profitable by the extent to which the value of exports exceeded the value of imports, thereby resulting in a balance of trade surplus and adding precious metals and treasure to the country’s stock. Scholars later disputed the degree to which mercantilists confused the accumulation of precious metals with increase in national wealth. But without a doubt, mercantilists tended to view exports favorably and imports unfavorably.

Even if the balance of trade was not a specific source of concern, the commodity composition of trade was. Exports of manufactured goods were considered beneficial, and exports of raw materials were considered harmful; imports of raw materials were viewed as advantageous and imports of manufactured goods were viewed as damaging. This ranking of activities was based not only on employment grounds, where processing and adding value to raw materials was thought to generate better employment opportunities than just extraction or primary production of basic goods, but also for building up industries to strengthen the economy and the national defense.

Mercantilists advocated that government policy be directed to arrange the flow of commerce to conform these beliefs. They sought a highly interventionist agenda, using taxes on trade to manipulate the balance of trade or commodity composition of trade in favor of the home country. But even if the logic of mercantilism was correct, this strategy could never work if all nations tried to follow it simultaneously. This is due to the fact that not every country can have a balance of trade surplus, and not every country can export manufactured goods and import raw materials.

Answer to Question No. 5(b)

Types of Strategic Alliances

Strategic alliances can be of various types depending upon the factors like capital commitment, type of industry, structure of organisation etc.

Strategic alliance on the basis of type of industry:

(i) *Horizontal strategic alliance* : Strategic alliance which is characterized by the collaboration between two or more firms in the same industry, e.g. the partnership between Sina Corp and Yahoo in order to offer online auction services in China.

(ii) *Vertical strategic alliances* : Strategic alliance which is characterized by the collaboration between two or more firms along the vertical chain of industry. e.g. Caterpillar's provision of manufacturing services to Land Rover.

(iii) *Intersectoral strategic alliances* : Strategic alliance characterized by the collaboration between two or more firms neither in the same industry nor related through the vertical chain, e.g. the cooperation of Toys "R" Us with McDonald's in Japan resulting in Toys "R" Us stores with built-in McDonald's restaurants.

Strategic alliance on the basis of capital commitments

(i) *Joint venture* is a strategic alliance in which two or more firms create a legally independent company to share some of their resources and capabilities to develop a competitive advantage.

(ii) *Equity strategic alliance* is an alliance in which two or more firms own different percentages of the company they have formed by combining some of their resources and capabilities to create a competitive advantage.

(iii) *Non-equity strategic alliance* is an alliance in which two or more firms develop a contractual-relationship to share some of their unique resources and capabilities to create a competitive advantage.

(iv) *Global Strategic Alliances* are working partnerships between companies (often more than two) across national boundaries and increasingly across industries, sometimes formed between company and a foreign government, or among companies and governments.

Answer to Question No. 5(c)

Calculation of dumping margins

The Agreement contains rules governing the calculation of dumping margins. In the usual case, the Agreement requires either the comparison of the weighted average normal value to the weighted average of all comparable export prices, or a transaction-to-transaction comparison of normal value and export price (Article 2.4.2). A different basis of comparison can be used if there is “targeted dumping”: that is, if a pattern exists of export prices differing significantly among different purchasers, regions or time periods. In this situation, if the investigating authorities provide an explanation as to why such differences cannot be taken into account in weighted average-to-weighted average or transaction-to-transaction comparisons, the weighted average normal value can be compared to the export prices on individual transactions.

Individual exporter dumping margins

The Agreement requires that, when anti-dumping duties are imposed, a dumping margin be calculated for each exporter. However, it is recognized that this may not be possible in all cases, and thus the Agreement allows investigating authorities to limit the number of exporters, importers, or products individually considered, and impose an anti-dumping duty on uninvestigated sources on the basis of the weighted average dumping margin actually established for the exporters or producers actually examined. The investigating authorities are precluded from including in the calculation of that weighted average dumping margin any dumping margins that are de minimis, zero, or based on the facts available rather than a full investigation, and must calculate an individual margin for any exporter or producer who provides the necessary information during the course of the investigation.

Answer to Question No. 5(d)

PEST analysis

PEST analysis is an analysis of the political, economic, social and technological factors in the external environment of an organisation, which can affect its activities and performance. PEST analysis (Political, Economic, Social and Technological analysis) describes a framework of macro-environmental factors used in the environmental scanning component of strategic management. It is a part of the external analysis when conducting a strategic analysis or doing market research, and gives an overview of the different macro environmental factors that the company has to take into consideration. It is a useful strategic tool for understanding market growth or decline, business position, potential and direction for operations. The growing importance of environmental or ecological factors in the first decade of the 21st century have given rise to green business and encouraged widespread use of an updated version of the PEST framework.

1. Political factors are basically to what degree the government intervenes in the economy. Specifically, political factors include areas such as tax policy, labour law, environmental law, trade restrictions, tariffs, and political stability. Political factors may also include goods and services which the government wants to provide or be provided (merit goods) and those that the government does not want to be provided (demerit goods or merit bads). Furthermore, governments have great influence on the health, education, and infrastructure of a nation.

2. Economic factors include economic growth, interest rates, exchange rates and the inflation rate. These factors have major impacts on how businesses operate and make decisions. For example, interest rates affect a firm’s cost of capital and therefore to what extent a business grows and expands. Exchange rates affect the costs of exporting goods and the supply and price of imported goods in an economy.

3. Social factors include the cultural aspects and include health consciousness, population growth rate, age distribution, career attitudes and emphasis on safety. Trends in social factors affect the demand for a company's products and how that company operates. For example, an aging population may imply a smaller and less-willing workforce (thus increasing the cost of labor). Furthermore, companies may change various management strategies to adapt to these social trends (such as recruiting older workers).

4. Technological factors include technological aspects such as R&D activity, automation, technology incentives and the rate of technological change. They can determine barriers to entry, minimum efficient production level and influence outsourcing decisions. Furthermore, technological shifts can affect costs, quality, and lead to innovation.

Question No. 6

You are a Company Secretary of ABC Limited which is planning to enter into joint venture with XYZ Limited based in Singapore for marketing and selling a new product launched by your company. As a company secretary please advice your company what are the issues which need to be dealt while negotiating a Joint Venture agreement. *(10 marks)*

Answer to Question No. 6

Selection of a good local partner is the key to the success of any joint venture. Personal interviews with a prospective joint venture partner should be supplemented with proper due diligence. Once a partner is selected generally the parties highlighting the basis of the future joint venture agreement sign a memorandum of understanding or a letter of intent. Before signing the joint venture agreement, the terms should be thoroughly discussed to avoid any misunderstanding at a later stage. Negotiations require an understanding of the cultural and legal background of the parties. In the definitive IJV agreement, the following principal matters should be dealt with comprehensively:

1. *Purpose of Joint Venture* : A well defined objective is one of the most important and crucial issues in the joint venture agreement. The parties should arrive at some understanding to identify and define in clear terms the basic purposes of the proposed joint venture. Therefore in identifying and defining the basic objectives of the proposed joint venture company, the parties must take into account the scope and size of joint venture business, management and operational responsibilities of parties, decision making process, terms of any ancillary agreement between joint venture and either of the parties etc.

2. *Contributions by Parties* : The agreement should describe in as much detail as possible the respective contributions of the parties, both tangible and intangible. Depending on tax considerations, it may be appropriate to specify values for the respective contributions of the parties. While planning and negotiating the proportion of contributions to be made by the parties in the proposed enterprise, the issues relating to financial, technical and functional requirements of the joint venture throughout the proposed term of its existence must be discussed and analyzed threadbare. Since the parties are something more than passive investors in the joint venture, the range of possible contributions are much

broader than is normally required. For instance, not only will the parties contribute cash and cash equivalents to finance the operations of the joint venture, they may also provide the venture with services, tangible and intangible property rights and specific functional expertise in such areas as research and development, manufacturing and distribution. In addition, parties may be able to contribute their experience and contacts in dealing with local regulators and in obtaining supplies of scarce raw material.

3. *Capital Structure* : The capital structure is an essential element of a business venture. Therefore, the issues relating to capital structure should be clearly defined in the joint venture agreement, so as to avoid any dispute between the parties concerning return on invested capital, management, control and administration of the enterprise. As the parties become the owner of the enterprise on its formation, they acquire such rights as may be created under the laws of the host country as well as any contractual agreement between the parties.

4. *Management, Control and Administration* : Devising an appropriate governance structure for a joint venture company is of critical importance to the success, growth and development of that company. It is critical that senior management be chosen early, be independent, have a clear charter and authority, and have clear reporting lines. It is in this connection very common for companies to enter into contract with one or more of the parties to conduct some specific functions and services including even basic research and development, manufacturing and distribution, thus as a consequence to these agreements, the party(ies) effectively assume control over operations of the enterprise, even though the nominal authority rests with the board of directors and managers of the companies. Therefore, to avert such happenings in the management and administration of joint venture, the parties must strike a balance between the powers and right of parties and the board of directors. As the joint venture companies are an independent legal entity with life of its own, it is of great importance to the parties to include in joint venture agreement key issues relating to operation of enterprise, such as legal compliances, insurance, disclosure of information, accounting and financial reporting including allocation and distribution of joint venture income.

5. *Governance* : The structure of the board of directors of the joint venture entity (or the committee that will provide management oversight in the case of a contract joint venture or a non corporate entity) should be given careful thought and specified with particularity. Fairly obviously, the board should be comprised of an odd number of directors unless impasse is contemplated and dealt with elsewhere in the agreement. It is common for the two joint venture partners' representatives to agree upon the odd numbered director.

6. *Allocation of Risks and Rewards* : In as much detail as possible, the parties should delineate who gets what, where, when, why and how. Dividend distributions, capital calls and allocations of losses (including special tax allocations, if permissible) should be covered.

7. *Alternative Dispute Resolution Provisions and Deadlock Provisions* : Most joint venture partners will not choose to risk litigation in either of their respective

forums. Detailed provisions and procedures for mediation and/or arbitration should be set forth. In addition, consideration should be given to impasse provisions short of mediation or arbitration as a way to resolve deadlocks that are not fatal to the joint venture.

8. *Continuity of Joint Venture Termination Provisions* : Detailed provisions should be inserted regarding when and how the agreement and joint venture terminate. If either party is to have an opportunity to buy the interest of the other party, that mechanism should be both well thought out and set forth in detail. The Joint Venture Agreement is an agreement in perpetuity. It lasts so long as the parties to the Joint Venture continue to be in business. However, situations may arise when one of the parties want to pull out of joint venture arrangement. In such cases, the outgoing party will have to make a first option of purchase of its interest to the other party to the Joint Venture. If this fails, the outgoing partner will have the option of bringing a new party to the Joint Venture in which case all the provisions of the Joint Venture agreement will apply to the new party, as if the new party had been a signatory to the Joint Venture agreement.

9. *Issue of Further Capital* : Another crucial issue in a Joint Venture is the issue of further capital by the Joint Venture Company. In order to maintain the proportion of capital contributed by the parties to the Joint Venture, further issue of capital is strictly regulated, subject to unanimous consent of the entire Board of directors and not by majority decision.

10. *Operational Issues* : Besides issue of further capital, a number of other operational issues like borrowing of monies, expansion and diversification of business of joint venture dividend policy, investment by the joint venture in the purchase of shares of other companies etc. are crucial in respect of which the articles of association of the joint venture company provides for unanimous consent of the Board, in which the joint venture parties are represented ,proportionate to their voting strength.

11. *Regulatory Issues* : All regulatory issues affecting the joint venture should be dealt with and, those that are conditions precedent, should be set forth clearly. Those issues include, but are not limited to, export and import controls, foreign corrupt practices act (and its equivalent) compliance, companies acts (and their equivalent) and competition law (anti-trust) compliance. In a few jurisdictions, currency repatriation must be addressed.

12. *Ownership Transfer* : In an equity IJV, provisions should set forth the restrictions on the transferability of ownership interests in the joint venture entity. The parties may agree to a variety of possible transfer arrangements, including rights of first offer, rights of first refusal, drag-long rights and tag-along rights.

13. *Governing Language* : Although a seemingly obvious point, IJV agreements are often written in two languages, particularly for joint ventures between American and Asian companies. One or the other of the language versions should be designated to prevail if there is an alleged inconsistency between the documents and their translations.

14. *Restrictive covenants* : A Restrictive Covenant is a specific type of covenant in

which someone agrees to be restricted by a contract. The most common type of restrictive covenant is one in which a former employee is restricted from working in his or her field for a specific time and within a specific area after leaving employment. Should the venture parties enter into restrictive covenants or have a memorandum of understanding in the complex area of parallel or related businesses must be discussed. Whether an IJV is dissolved or ends by one party purchasing the interest of another, non-competition provisions may well be appropriate. In addition, parties commonly seek non-disparagement, confidentiality and non-solicitation of employee covenants.

15. *Intellectual Property Provisions* : The IJV agreement or a separate attached document should clearly delineate all rights to IP, technology, software and the like. In addition, an appropriate licensing agreement should be executed in respect to those "knowledge" items. The IJV agreement should clearly delineate ownership of intellectual property upon dissolution or termination of the joint venture.

Question No. 7

What are the different kinds of subsidies available under the agreement on subsidies? (10 marks)

Answer to Question No. 7

Categories of Subsidies

The SCM Agreement creates two basic categories of subsidies: those that are prohibited, those that are actionable (i.e., subject to challenge in the WTO or to countervailing measures). All specific subsidies fall into one of these categories.

1. *Prohibited subsidies* : Subsidies that require the recipients to meet certain export targets or to use domestic goods instead of imported goods would fall under the category of prohibited subsidies. They are prohibited because they are specifically designed to distort international trade and are therefore likely to hurt trade between countries.

   Two categories of subsidies are prohibited by Article 3 of the SCM Agreement:

   — *Export Subsidies* : It consists of subsidies contingent, in law or in fact, whether wholly or as one of several conditions, on export performance. A detailed list of export subsidies is annexed to the SCM Agreement.

   (Students can refer to the list on the website of WTO)

   — *Local Content Subsidies* : It consists of subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods

   These two categories of subsidies are prohibited because they are designed to directly affect trade and thus are most likely to have adverse effects on the interests of other Members.

2. *Actionable subsidies* : Subsidies which have an adverse effect on the interest of the complaining country, which may or may not be the importing country but whose interest are said to be affected adversely. An actionable subsidy may be

of three types i.e. those which arise when any subsidy hurts the domestic industry of importing country, or is such which has the effect of reducing the share of the competing country in the competing export market, or is such which make the imported goods uncompetitive to domestic goods.

Most subsidies, such as production subsidies, fall in the "actionable" category. Actionable subsidies are not prohibited. However, they are subject to challenge, either through multilateral dispute settlement or through countervailing action, in the event that they cause adverse effects to the interests of another Member. There are three types of adverse effects.

— First, there is injury to a domestic industry caused by subsidized imports in the territory of the complaining Member. This is the sole basis for countervailing action.

— Second, there is serious prejudice. Serious prejudice usually arises as a result of adverse effects (e.g., export displacement) in the market of the subsidizing Member or in a third country market. Thus, unlike injury, it can serve as the basis for a complaint related to harm to a Member's export interests.

— Finally, there is nullification or impairment of benefits accruing under the GATT 1994. Nullification or impairment arises most typically where the improved market access presumed to flow from a bound tariff reduction is undercut by subsidization.

Question No. 8

What are the factors to be kept in mind while managing an alliance ? *(10 marks)*

Answer to Question No. 8

Managing an alliance is relatively a new art. Finding the right mix of management ingredients for success is quite daunting. However certain factors responsible for successful management of a strategic alliance are given below.

(1) *Senior management commitment* : The commitment of the senior management of all companies involved in a strategic alliance is a key factor in the alliance's ultimate success. Indeed, for alliances to be truly strategic they must have a significant impact on the companies overall strategic plans; and must therefore be formulated, implemented, managed, and monitored with the full commitment of senior management. Without senior management's commitment, alliances will not receive the resources they need. If senior management is not committed to alliances, adequate managerial resources, in addition to capital, production, marketing and labor resources, may not be assigned in order for alliances to accomplish their objectives. The biggest hurdle senior management has to overcome in committing itself to strategic alliances is management's own fear of a loss of control. Xerox is an example of a company which has demonstrated a high level of senior management commitment to strategic alliances. Xerox even has executives with titles such as senior vice president, corporate strategic alliances and vice president, worldwide alliances.

(2) *Similarity of management philosophies* : Companies should prefer to form partnerships with those companies whose management philosophies, strategies

and ideas are most similar to their own. Indeed, differences in corporate partners' personalities, like differences in spousal personalities, can often lead to tragic results. Misunderstandings and fightings between the senior management of the two organizations eventually lead to failure of strategic alliance. Therefore, in order to ensure the best chance of success, companies should either seek partners who do have similar management philosophies, or draft an alliance agreement that adequately addresses the differences, and provides for their resolution.

(3) *Effective and strong management team* : A McKinsey study found that 50 percent of alliance failures are due to poor management. The best strategy to grow via alliances may be to move slowly, and start with simple alliances and move towards more complex ones as alliance experience and talent is acquired. Hewlett-Packard and Lotus are corporations which have been cited as having strong alliance management. HewlettPackard"s approach to alliances is very formal, well-organized and structured. Hewlett-Packard has developed a 400-page alliance binder with case histories, tool kits, checklists, policies, and procedures to help not only its alliance managers, but its middle managers as well, to more appropriately manage alliances and alliance relationships. Hewlett-Packard also has developed its own two-day strategic alliance training class, which over 700 of its managers have attended to date. Lotus likewise has a strong management team for its alliances.

(4) *Frequent performance feedback* : In order for strategic alliances to succeed, their performance must be continually assessed and evaluated against the short and long-term goals and objectives for the alliance. In order for the feedback monitoring system to be successful, it is important that the goals of the alliance be well-defined and measurable. In addition, benchmarks for alliance performance should be set to assist management in evaluating alliance results. In general, an alliance is successful if both partners achieve their objectives or by its long-term strategic value. Another measurement technique for strategic alliances is looking at the market share. Strategic alliances are very tough to measure and evaluate, but can be done with the help of understanding the form used and understanding the goals of the companies involved.

(5) *Clearly defined shared goals and objectives* : In forming a strategic alliance the question must be asked: How integrated will the alliance be with the parent organizations?"" Some alliances are highly integrated with one or more of the parent organizations and share such resources as manufacturing facilities, management staff, and support functions like payroll, purchasing, and research and development. Conversely, others may be autonomous and independent from their parent organizations. Whatever the relationship between the two partners, the merging of separate corporate cultures in which the parent firms may have different, even ultimately conflicting, strategic intents can be difficult and anything but smooth. It is extremely important that alliances are aligned with the company strategy. Top management must articulate a clear link between where it expects the industry"s future profit pools will be, how to capture a larger share of those, and where, if at all, alliances fit in that plan (Ernst and Stern, 1996).

(6) *Thorough planning* : Planning, commitment, and agreement are essential to the success of any relationship. The overall strategy for the alliance must be mutually developed. Key managing individuals and areas of focus for the alliance must be identified. The first step is to gain a clear understanding of the vision and values of each company. The next step is to gain agreement on the market conditions in the region of the world that the joint venture will be operating in. The next step is to clearly state the issues, strengths, and concerns of each organization. These initial steps allows the participants to bridge preliminary gaps of understanding at the onset of the process. During these initial fact finding meetings the partners can learn a great deal about their potential partner(s). The next step is to identify areas of common ground. Here is where commonality in the strategic direction among the partners can be identified. Next the partners need to define the internal and external value of the alliance. They will also need to agree on the strategic opportunities to mutually pursue. The final step in this planning process is to create a tactical plan to address the strategic targets . Thorough planning is one of the key ingredients to the successful formation of strategic alliances.

(7) *Clearly understood roles* : In forming strategic alliances the partners must have clearly understood roles. Questions which must be answered concerning the role of each partner . It is crucial that this question of control is resolved before the alliance is formed. Some firms view strategic alliances as a second-best option that they would prefer to do without. This attitude towards an alliance is problematic at best. Because of uncertainty and discomfort, the feeling is that these alliances must be closely managed and controlled so as not to get out of hand. If the partners in an alliance decide up front exactly what each partner"s role is in the newly-formed business, then there is no misunderstanding or uncertainty as to how decisions will be made. In this way the relationship between the partners will be a much more amicable one.

(8) *International vision* : In order to succeed in an international strategic alliance, managers of firms must incorporate a global strategic vision into their enterprise. In order to compete in the growing international market, it will be increasingly necessary for firms to cooperate on a global level and continually build international relationships which will facilitate the process of global competition.

(9) *Partner selection* : Partnership selection is perhaps the most important step in creating a successful alliance. A successful alliance requires the joining of two competent firms, seeking a similar goal and both intent on its success. The term competent firm"" is relative to the involved parties" strategies, objectives and goal. A strategic alliance must be structured so that it is the intent of both parties that it will actually succeed -through the need for speed, adaptation, and facilitated evolution. The process for partner selection is: 1 state the firm"s strategy; 2 develop a partnership benchmark; 3 eliminate undesirable business sectors; 4 select promising business sectors; and 5select from potential candidates Having selected a partner, the alliance should be structured so that the firm"s risks of giving too much away to the partner are reduced to an acceptable level.

(10) *Communication between partners* : maintaining relationships :As with any

relationship, communication is an essential attribute for the alliance to be successful. Without effective communication between partners, the which accompany any relationship which does not manifest good communication practices. The necessity for good communications in building and maintaining a strong strategic alliance relationship is best summed up by Ohmae: An alliance is a lot like a marriage. There may be no formal contract. There is no buying and selling of equity. There are few, if any, rigidly binding provisions. It is a loose evolving kind of relationship. Sure, there are guidelines and expectations, but no one expects a precise, measured return on the initial commitment. Both partners bring to an alliance a faith that they will be stronger together than they would be separately. Both believe that each has unique skills and functional abilities the other likes. And both have to work diligently over time to make the union successful.

Question No. 9

What are the different kinds of Intellectual Property protected by TRIPS ? How it is protected ? *(10 marks)*

Answer to Question No. 9

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986–94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time. The agreement covers five broad issues:

— how basic principles of the trading system and other international intellectual property agreements should be applied

— how to give adequate protection to intellectual property rights

— how countries should enforce those rights adequately in their own territories

— how to settle disputes on intellectual property between members of the WTO

— special transitional arrangements during the period when the new system is being introduced.

The areas covered by the TRIPS Agreement are -

Copyright : The TRIPS agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases should be protected. It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films. The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

Trademarks : The agreement defines what types of signs must be eligible for protection as trade-marks, and what the minimum rights conferred on their owners must be. It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well-known in a particular country enjoy additional protection.

Geographical indications : A place name is sometimes used to identify a product. This "geographical indication" does not only say where the product was made. More importantly it identifies the products special characteristics, which are the result of the product's origins.

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, and the TRIPS Agreement contains special provisions for these products. But the issue is also important for other types of goods.

Using the place name when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and it can lead to unfair competition. The TRIPS Agreement says countries have to prevent this misuse of place names.

For wines and spirits, the agreement provides higher levels of protection, i.e. even where there is no danger of the public being misled.

Some exceptions are allowed, for example if the name is already protected as a trade-mark or if it has become a generic term. For example, "cheddar" now refers to a par-ticular type of cheese not necessarily made in Cheddar, in the UK. But any country wanting to make an exception for these reasons must be willing to negotiate with the country which wants to protect the geographical indication in question.

The agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines. These are now part of the Doha Development Agenda and they include spirits. Also debated in WTO, is whether to negotiate extending this higher level of protection beyond wines and spirits.

Industrial designs : Under the TRIPS Agreement, industrial designs must be protected for at least 10 years. Owners of protected designs must be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design.

Patents : The agreement says patent protection must be available for inventions for at least 20 years. Patent protection must be available for both products and processes, in almost all fields of technology. Governments can refuse to issue a patent for an invention if its commercial exploitation is prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than microorganisms), and biological processes for the production of plants or animals (other than microbiological processes).

If a patent is issued for a production process, then the rights must extend to the product directly obtained from the process.

Integrated circuits layout designs : The basis for protecting integrated circuit designs ("topographies") in the TRIPS agreement is the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, which comes under the World Intellectual Property

Organization. This was adopted in 1989 but has not yet entered into force. The TRIPS agreement adds a number of provisions: for example, protection must be available for at least 10 years.

Undisclosed information and trade secrets : Trade secrets and other types of "undisclosed information" which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. But reasonable steps must have been taken to keep the information secret. Test data submitted to governments in order to obtain marketing approval for new pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

Curbing anti-competitive licensing contracts : The owner of a copyright, patent or other form of intellectual property right can issue a licence for someone else to produce or copy the protected trademark, work, invention, design, etc. The agreement recognizes that the terms of a licensing con-tract could restrict competition or impede technology transfer. It says that under certain conditions, governments have the right to take action to prevent anti-competitive licensing that abuses intellectual property rights. It also says governments must be prepared to consult each other on controlling anti-competitive licensing.