

Question 1

The Uyghur Forced Labor Prevention Act (“UFLPA”) promulgated by the United States in 2021 has triggered heated debates these years. In brief, UFLPA prohibits the goods manufactured wholly or in part in Xinjiang or by an entity on the UFLPA Entity List from being imported into the United States out of a rebuttable presumption that such goods are made with forced labor. UFLPA brings the discussion of process and production methods (“PPMs”) into the spotlight again. Please analyze the following questions related to PPMs.

1. WTO dispute settlement practice has developed the well-known “four criteria test” for analyzing product likeness under the General Agreement on Tariff and Trade (“GATT”) Articles I:1, III:2, or III:4. How could the PPMs of the goods at issue be considered under the four-criteria test? In answering this question, please use the likeness analysis between cotton produced with forced labor and cotton produced without forced labor based on the current WTO dispute settlement practice. (25%)
2. From an international trade policy perspective, do you think WTO dispute settlement should accept PPMs as the fifth criterion when analyzing product likeness? (25%)

Question 2

The Hephaestite Crystalline Alloy (HCA) is a breakthrough material essential for various advanced technology applications, including high-efficiency renewable energy generation, advanced medical devices, and sophisticated military and surveillance equipment. Country A and Country B, both developed countries WTO members, are currently the only two countries that are able to produce HCA due to their advanced technology capacity and exclusive access to rare raw materials.

Recently, Country A has enacted a policy (HCA Export Control Measure, hereinafter HCA Measure) that bans the export of HCA to its geopolitical rival, Country C, a developing country WTO member. The measure does not ban the export of HCA to countries other than Country C. The HCA Measure also bans the companies in Country B from exporting HCA to Country C, based on the rationale that HCA producers in Country B rely heavily on Country A’s technology in the production of HCA. HCA Measure is based on the following concerns of Country A:

1. National Security: Country A considers that Country C could use HCA to significantly enhance its military capabilities, potentially destabilizing the region’s balance and threatening the security of Country A and its allies. The record shows that Country C has been using its military might, leading to tension between it and its neighboring countries. Still, although there are occasional exchanges of dissatisfaction between Country A and Country C, they have not engaged in military conflicts at present.
2. Human Rights Violations: There are credible reports suggesting that Country C might utilize HCA in technologies employed to suppress and monitor its minority population, leading to human rights abuses.
3. Domestic Shortage: Country A is experiencing a domestic shortage of HCA, which is increasingly needed for its civilian and military applications.

Please analyze the consistency of the HCA Measure adopted by Country A with the WTO law. (50%)