

第一題：50%

A 國之前曾為一非市場經濟之國家，嗣後雖加入 WTO，但其國內仍有不少國營事業或國家所控制之事業存在。A 國為發展其國內汽車產業，採取以下二項措施：(1) 要求其持有百分之百股份之商業銀行提供特別優惠貸款給汽車製造業者；(2) 要求其持有 51% 股份之鋼鐵製造廠應以低於市面價格銷售鋼鐵產品給汽車製造業者。之後，A 國的汽車輸出使 B 國國內汽車產業遭受實質損害，B 國汽車產業遂向該國進口救濟主管機關申請針對由 A 國進口之汽車課徵平衡稅，B 國主管機關經調查後，認定上開商業銀行及鋼鐵製造廠屬於「補貼及平衡措施協定」(Agreement on Subsidies and Countervailing Measures) 中之「政府或任何公立機構」(a government or any public body)，並以其他要件符合為由，決定對 A 國進口汽車課徵平衡稅。A 國政府對此決定向 WTO 爭端解決機構控訴，過程中 B 國政府主張任何受政府控制之企業皆屬於「補貼及平衡措施協定」所稱之「公立機構」；A 國政府則反駁以上開商業銀行及鋼鐵製造廠為一般企業，只因歷史因素國家持有大量股份。如果你是 WTO 爭端解決機構成員，對於本案你將如何判斷？

第二題：(須以英文作答，否則不予計分) 50%

Countries A and B are both WTO Members. These two countries have long history of problems concerning Country B's beef import from Country A. The situation is summarized as the following:

- (1) In 2005, Country B banned imports of beef from Country A following the case of bovine spongiform encephalopathy, known as "mad cow disease", in Country A.
- (2) In 2008, Country B signed an agreement with Country A (hereinafter the "Beef Agreement") and opened the door to bone-in beef, ground beef and other products from cattle under 30 months old.
- (3) In 2009, Country B's legislature revises its Food Act and banned the import of certain beef products from countries with documented mad cow disease cases over the past decade. This amendment effectively halted imports of "ground beef" and "internal organs" from Country A, which alleged that Country B is in violation of the bilateral Beef Agreement and the WTO agreements.

Please analyze and answer the following questions based on the above information:

- (1) About the Beef Agreement:
 - (i) Can Country A bring a complaint against Country B under the WTO Dispute Settlement Understanding based on the allegation that Country B violates the Beef Agreement between them?
 - (ii) Would the Beef Agreement help interpret relevant WTO agreements in the dispute settlement procedures?
- (2) About GATT 1994: If Country A is to argue that Country B is in violation of the GATT 1994,
 - (i) What could be the relevant articles and what are their respective requirements?
 - (ii) Whether Country B violates these articles?
 - (iii) Whether there are any defenses under the GATT 1994 available to Country B and what are the requirements for applying the defenses?
- (3) Other WTO agreement(s): In addition to the GATT 1994,
 - (i) What other WTO agreement(s) could also be closely relevant and what are the requirements or general principles under the agreement(s)?
 - (ii) Whether Country B violates these/this agreement(s)?
 - (iii) Whether there are any defenses under the agreement(s) available to Country B?
 - (iv) Whether the defense under the GATT 1994 also serves as a defense under other WTO agreement(s)?
- (4) Country B's legislature: Could Country B rely on its legislature to defend its position for prohibiting import of "ground beef" and "internal organs" from Country A?