

- 一、最近，二岸間爲了大陸毛巾業者可能有將其毛巾傾銷至台灣之虞，而掀起一場毛巾大戰，不少人士主張應對從大陸進口之毛巾，課徵反傾銷稅。的確，大陸大量且低價地將毛巾出口到台灣，似乎已經嚴重壓縮台灣毛巾業者的產量及獲利空間，引發台灣毛巾業的蕭條。從而，爲了救濟台灣毛巾業者，似有必要對於從大陸進口之毛巾課徵傾銷稅。加之，傳統上，「傾銷」被認爲是一種不公平的貿易行爲，故而爲對抗此一不公平貿易行爲所加徵之反傾銷稅，似亦有其正當性。然而，不僅不少學術著作認爲 GATT/WTO 的反傾銷規範有其理論問題點，且於實際運作上其不少構成要件亦經常被濫用，成爲貿易保護主義者保護其國內產業、阻礙自由貿易進行之道具。前幾年，香港、新加坡等幾個經常是美、歐反傾銷措施適用對象之國家，即曾嚴厲指陳現行 GATT/WTO 反傾銷規範的問題點，而主張應廢除 GATT/WTO 之反傾銷規範。就妳個人之觀察，GATT/WTO 反傾銷規範於理論上，可能蘊藏哪些問題點？而美國等反傾銷措施的運用大國，於其實際的反傾銷實務運作上，又有哪些作爲可能是反傾銷措施的濫用？倘若，縱使有這些理論及實務運作上的問題點，妳仍認爲反傾銷規範有其存在的必要性，妳的理由爲何？(50%)
- 二、Paragraph 1, Article I of GATT 1994 states: "With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties." Paragraphs 2 and 4 of Article III provides: "The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1" and "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product." Both articles use the same term "like product". Please explain the concept of like product and the functions of including the term in these provisions. Please also give us examples to support your explanations. Also In *Japan – Alcoholic Beverages II*, the Appellate Body clarified the two elements contained in the first sentence of Article III:2 – "like products" and "in excess of" by stating: "Article III:1 informs Article III:2, first sentence, by establishing that if imported products are taxed in excess of like domestic products, then that tax measure is inconsistent with Article III. Article III:2, first sentence does not refer specifically to Article III:1. There is no specific invocation in this first sentence of the general principle in Article III:1 that admonishes Members of the WTO not to apply measures so as to afford protection'. This omission must have some meaning. We believe the meaning is simply that the presence of a protective application need not be established separately from the specific requirements that are included in the first sentence in order to show that a tax measure is inconsistent with the general principle set out in the first sentence. However this does not mean that the general principle of Article III:1 does not apply to this sentence. To the contrary, we believe the first sentence of Article III:2 is, in effect, an application of this general principle. The ordinary meaning of the words of Article III:2 first sentence leads inevitably to this conclusion. Read in their context and in the light of the overall object and purpose of the *WTO Agreement*, the words of the first sentence require an examination of the conformity of an internal tax measure with Article III by determining, first, whether the taxed imported and domestic products are 'like' and, second, whether the taxes applied to the imported products are 'in excess of' those applied to the like domestic products. If the imported and domestic products are 'like products', and if the taxes applied to the imported products are 'in excess of' those applied to the like domestic products, then the measure is inconsistent with Article III:2, first sentence." Please comment. (We only accept your answers to this Question in English.)(50%)