in this regard. This was the case bearing in mind that until the creation of the WTO in 1994, only two provisions in GATT - Articles XXII and XXIII - address the settlement of disputes, although in a very incomplete and mainly diplomatic manner: they only opened the possibility to establish "consultations" among parties and with no true capacity enforce any action to suspend the violation.

At the Uruguay Round, Member-States created therefore the Dispute Settlement Understanding (present in the Annex 2 of the WTO Agreement) as an exclusive forum for adjudicating disputes among WTO members. It established a compulsory third party adjudicating regime, [illegible] (Mavroidis)

Indeed, two organs, acting under the General Council meeting as Dispute Settlement Body, were created to act when consultations among members were not sufficient to solve the disputes. Indeed, first of all, a "panel", which is a ad-hoc organ aiming at creating a proposal for a sentence to DSU and the Appellate Body, a permanent organ serving as an appeal body only with competence on grounds of law. The drafters of the DSB were even innovative to understand the need the [illegible] mechanism when parties would not accept decisions and so created the possibility to "compensation" which is when the breaching party compensates the other for its damage" or even the "suspension of concessions" by the suffering party to the breaching one when the latter was not accepting all the former mechanisms (Article 22 of DSU). Article 22 also states that this "suspension of concessions" must be temporary and proportional to damages inflicted.

However, the problems of DSU are evident. First, we may never forget that we are dealing with sovereign states and so there is never the full capacity to enforce one decision that demands its application by the state. In this sense, arises also the problem with "compensations": quite often, developed countries use all of their bargaining power against developing countries to achieve very minimum compensations to be free to keep violating WTO obligations against developing countries. In addition, there is also the problem with the Appellate Body: indeed, it is currently under threat to its very survival as the US has been blocking all judge appointments, menacing not to reach to the number of 3 judges. Moreover, one can always recall that the proliferation of Preferential Trade Agreements among WTO members has created an interplay between many rules regarding the legal regime of international trade ruled by WTO law (which is what the DSU is founded upon) and by PTA rules; thus creating also an interplay of legal jurisdictions, which has diminished the preponderance and enforcement capacity of the WTO Dispute Settlement mechanism. (Mavroidis)

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Part A

As to properly address this issue, we will consider the actions of the Contracting parties separately. On the one hand, as regards to the People's Democratic Republic of (PDR) we must first bear in mind that an "export ban" is considered as quantitative restrictions - a "quota" -, therefore falling under Article XI of GATT. Considering that quotas have the effect of blocking trade, these are generally prohibited under this article. However, we need to assess now if this export ban falls within any of the exceptions. In this sense, even though it a temporary measure, it does not fall within any of the exceptions of Article XI.2 of GATT. In addition, it does not fall either on the exception allowed by Article XII.1 of GATT as this export ban on respiration devices is not justified as a measure to safeguard the balance of payments of the country. The same for Article XIII. Nevertheless, if we move to Article XX of GATT, dealing with "General Exceptions", we may find some legal ground - or at least - some room of discussing the legality of an "export ban" on respiration devices, which is temporary and happens during the COVID pandemic - a disease that attacks one's lungs (pulmões) severely. In this sense, paragraph (b) of this provision, which allows for exceptions in case of necessity "to protect human, animal or plant life or health" may give some legality to the export ban. Moreover, this is also the cause this ban, happening during the Covid pandemic and having a temporary status, seems to respect the "chapeau" of Article XX as it does not seem to be taken in manners intended to discriminate arbitrarily or unjustifiable between countries; as it may not be a "disguised restriction on international trade. However, as panels and the Appellate Body use to have a market-oriented approach on assessing the legality of exceptions (Fried Rosslere), it could not be accepted and so the country should not have taken this measure.

On the other hand, concerning the Kingdom of Shangri-La, which as imposed a retaliatory tariff of 20% on imports of goods coming from the PDR, the assessment of legality of its action seems to be much clear as a violation of WTO law. Firstly, we recognize that contrary to quotas, "tariffs" face a different treatment as regards to its prohibition: indeed, as they do not block trade immediately, they are generally accepted with limitations (as it is enshrined in Article II, XXVIII and XXVIII bis of GATT). Nevertheless, this 20% tariff on imports of goods coming from the PDR as

a retaliation measure breaches the Commitment to Schedule of Concessions (Art II.1) and finds no lawfulness in the exception provided in Article II.2 of GATT. Moreover, we seem to find no paragraph to this issue in Article XX, dealing with General Exceptions. In addition to this, this immense tariff is really likely to breach the paramount principle of "General Most-Favoured Nation Treatment" (Article I) as it will cease to expand the same advantages to products coming from PDR in comparison to like products of other Countries. Moreover, the extent of this tariff does not seem to be in any way proportional to the effects of the export ban. In this sense, the Kingdom of Shangri-la should have abstained to take this measure. In fact, it should have resorted to the Dispute Settlement mechanisms of the WTO (Annex 2 to the WTO Agreement - Dispute Settlement Understanding), claiming a violation from PDR (Article XXIII.1 of GATT), and if consultations (Art. 4 DSU) between parties could not solve the issue, ask for the creation of a "panel" (Art. 6 DSU) to solve the litigation, with the chance to appeal on grounds of law to the Appellate Body (Art. 17 DSU). In that case, if proved that there was a violation and PDR was not implementing the decision, it could resort to ask for compensation or even the suspension of Concessions (Article 22 DSU). However, the latter must be proportional to the damage inflicted, preferably in the same sector (Art. 22.3.a), accepted by the DSB (Art. 22.4) and temporary until the remedy of the violation (Art. 22.8)

The unilateral increase of tariff is a breach of Art. II GATT (not Art. I - MFN).

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Part 3

1. (Answer a) The WTO is only formed by two organs - the Ministerial Conference and the General Council - which are both "composed of representatives of all the members" (Articles IV.1 and IV.2 of the WTO Agreement), with no supranational authorities. The same applies to the Secretariat (Article VI). As regards its aim, Article III (1 and 2) of the WTO Agreement demonstrates its ambition to liberalise trade progressively by facilitating the implementation of Multilateral Trade Agreements and serving as a forum for negotiations among its Members.

(Answer b)

2. As it is provided in Article IX of the WTO Agreement, "[T]he WTO shall continue the practice of decision-making by consensus..." (Article IX.1). However, the "Decisions of the Ministerial Council and the General Council shall be taken by a majority of votes cast" (Article IX.1) and, when it is decided to "waive an obligation imposed on a Member... such decision shall be taken by three fourths of the Members" (Article IX.2). This proves the decision-making is generally by consensus, but voting is possible.

3. (Answer d) This is clearly enshrined in Article XII.1 dealing with "Accession", stating that "Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations (...) may accede to this Agreement on the terms to be agreed between it and the WTO."

4. (Answer a) Even though that paragraph b) - related to "protect human, animal or plant life or health" - and paragraph g) - related "to the conservation of exhaustible natural resources (...)" - of Article XX of GATT dealing with General Exceptions seem to make a reference to environmental issues, one must bear in mind that it is not the aim of this provision to protect the environment "per se", but always to protect it with a trade angle and a market-oriented approach (Friedl Roessler). In fact, panels and the Appellate Body only accepted this paragraph if, for instance, the overuse of resources could prejudice its economic exploitation in the future

5. (Answer a) This idea is enshrined in Article I.1 of GATT, stating that "With respect to customs duties and charges of any kind imposed (...) any advantage, favour, privilege, immunity granted by any contracting party originating in or destined for any other country shall be accorded immediately and unconditionally to the like product (...)". So, once the product is found to be like (whether by its purpose, physical characteristics, consumer taste or tariffs classification) - it must be given the same favourable treatment.

Careful w/ the scope of the MFN

6. (Answer c) This idea is enshrined in Article III of GATT establishing a more complex obligation than Article I in order to make sure that no "de jure" or "de facto" discrimination happens between domestic and imported like products in relation to taxes or any other internal charges (as provided in Article III.2 in its two sentences, respectively); and also regarding any sort of legislation "affecting their internal sale, offering for sale, purchase, distribution, transportation or use" (Article III.1). In this stage, the idea of likeness is increased to include all products that may have a directly competitive or hypothetical substitution relation (

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Part C.

2. As many authors seem to be agree, the creation of a dispute settlement mechanism is regarded as one of the most important institutional achievements in WTO and in international trade law.

As acknowledged by Mavroidis, "the WTO Dispute Settlement System aimed to curb unilateralism by providing a multilateral process under the aegis of the WTO as the exclusive forum for WTO adjudication". Indeed, and bearing in mind the very often instances when countries resorted to unilateral and protectionist measures aimed to retaliate (a great example is the US with its Section 301, which used to retaliate against the EU Agricultural Common Policies), there was the need to strengthen the WTO mechanisms