

## 浙江工商大学 2008 年硕士研究生入学考试试卷 (A) 卷

招生专业: 国际法

考试科目: 837 国际经济法 总分: 150 分 考试时间: 3 小时

## 一、名词解释 (每小题 5 分, 共 40 分)

1. Fundamental breach of contract
2. ADR
3. 避免国际重复征税的“抵免法”
4. 违约险
5. BOT
6. plurilateral agreements
7. 保障措施
8. Compulsory licensing

## 二、简答题 (每小题 10 分, 共 40 分)

1. 试述双边投资条约与区域贸易协定的关系。
2. 简述海外投资保险制度的特征。
3. 根据《服务贸易总协定》, 试述服务贸易的提供方式及其特点。
4. 简述《联合国国际货物销售合同公约》关于卖方在知识产权担保方面的担保及免责。

## 三、论述题 (每小题 20 分, 共 40 分)

1. 试述 WTO 争端解决机制和国际投资争端解决机制的区别。
2. 简述 WTO 下的仲裁和一般商事仲裁的区别。

## 四、案例分析 (30 分)

Your client, Ms. Tek, writes computer software. In July of 1995, she obtained a U.S. patent on an algorithm (一种金属材料) used in her software. Ms. Tek then began selling her software under the unregistered mark (未注册商标) "TekHed." She has not registered a copyright in the software or its accompanying manual (手册).

Ms. Tek began by selling the software and manual out of her garage. After encountering unprecedented domestic demand for her software, however, she contracted out (外包) the copying and distribution of the software and accompanying manuals to the U.S.-based CompCopy Corp. All the software diskettes and manuals she has sold carry the "TekHed" mark, which also appears when a computer runs the software.

In August of 1995, using the services of CompCopy, Ms. Tek began exporting TekHed to retailers in Japan. In September, 1995, Ms. Tek learned that other Japanese retailers had begun importing TekHed from U.S. retailers, who were re-selling TekHed diskettes that they had purchased from Ms. Tek. These U.S. re-sellers offered TekHed at about 1/2 the price that Ms. Tek charged her Japanese retailers.

Why the big difference in price? Because Ms. Tek had to recoup (偿付) the costs of preparing a Japanese-language version of the TekHed software manual. The U.S. re-sellers sold only the diskettes – something that Ms. Tek refused to do for fear that Japanese consumers would blame her software for any confusion they suffered in using TekHed. Needless to say, the Japanese retailers with whom Ms. Tek deals do not feel very

happy about their competitors selling TekHed at 1/2 off. Although her contracts with these retailers require that they purchase TekHed only from her, a few of them have started carrying diskettes purchased from the U.S. re-sellers.

(1) Do you think which convention, the Berne Convention or the Paris Convention, applies to the case if both Japan and the US are members of both the Berne Convention and the Paris Convention? (10 分)

(2) Write a brief memo (备忘录) describing what (if anything) Ms. Tek can do to prevent these unauthorized resales of her TekHed software, taking care to explain how and why she can (or cannot) do so. While you should certainly discuss the legal principles at issue, do not neglect to consider pragmatic business concerns. (20 分)