



2008-2009 ELSA Moot Court Report

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I – Introduction:

The European Law Students' Association (ELSA) organizes the Moot Court Competition on International Trade Law. This simulated hearing, based on the World Trade Organization (WTO) dispute settlement system, involves not only law students from the entire world, but also several respected trade law experts and WTO legal officers. This activity complements the formal legal education, since it allows students to put theory into practice and participating universities to further develop the academic interest in this field.

This report describes the 2008-2009 ELSA Moot Court training and experience of the Graduate Institute's team. Part II of the report contains a detailed account of all activities done by the 2008-2009 team, including a timeline graphic. This section was organized according to the 3 phases of the competition: (a) written submissions, (b) regional oral rounds, and (c) world final oral round. Part III of this report includes a critical analysis of the participation of each team member and of the coaches. Part IV deals with the results of each phase and a brief comparison with the 2007-2008 team. Finally, Part V contains the budget report and Part VI a small article regarding the moot court experience for 2009-2010 students.

II – Description and timeline of activities:

II.A- Written submission

During the Moot Court Competition, each team needs to send in their written submissions, a written document with all the legal arguments. This has to be done for both the Complainant and the Respondent, and all teams are graded on this. The case was published on the website of ELSA in October 2008. A couple of days after, we all met with the teaching assistant in order to receive more information, and to hold a introductory pleading on the basis of which the four team members were selected. A week later, we came together for the first time to discuss the case and divide the work. We had to make a written submission for both the Complainant and the Respondent. The case itself involved three claims, some of which consisted of several different sub-claims.

We started working on the Complainant first, and divided the three claims among the four of us. Each person had to write an issue paper, a document with all the legal arguments. The issue papers served as a basis for the written submissions. We had about two weeks to do this and send it to the team members and the coaches. During the second meeting, we discussed each issue paper and received comments. The following weeks, we reviewed and made changes to the issue papers in order to improve them. We met each week for about two to three hours, but most of the work had to be done at home. All of us took the course International Trade Law, so we were still learning, while working on the paper. Thus, the task was especially challenging for the claims, which involved Agreements that we had not yet seen during the class.

We finished the first draft of the written submissions for the Complainant between the end of December 2008 and the beginning of January 2009. We then started working on the Respondent. Each of us wrote an issue paper on a claim that we had not worked on for the Complainant. This was of great use, since it sometimes brought forward different arguments that could also be used in the submissions of the Complainant. Following, we decided that each person would finish the submissions of one claim for both the Complainant and Respondent.

In January 2009, we all worked from home and corresponded through email. Although this was not the ideal form of working in group, we were all so motivated and committed that it worked very well. It was only at the end of January 2009 that we met again. This phase consisted of making many slight changes and reductions to the submissions in order to comply with the requirements of the competition. We met several times a week and, on the last week, we met every day. During these meetings, we discussed in group for hours on problems that we had encountered. This phase was extremely valuable, since it really helped us to improve our knowledge on certain topics. Each claim still had unanswered questions, so everyone continued the intense research to find solutions and to develop good arguments. After months of in-depth research and drafting, it was possible to notice that we all had acquired a reasonable good knowledge of case law. This perception motivated even more our work and also made us come together as a group.

During the last week, we worked on the submissions full time. Our main concern at the end of this phase was that our work was too long and had to be reduced. This problem demanded that we revised entire sections with the purpose of selecting our best arguments and making them more concise. Finally, a final review was done in order to check the language consistency (American English and Britain English), and to format the footnotes.

Altogether, this was one of the most important phases. All team members learned how to draft legal submissions (something that was new for most of us), and everyone managed to improve their knowledge on trade law in such a short period of time. In addition, it was extremely interesting to discuss all the arguments and claims and to notice how each problem could be approached from so many different perspectives. In fact, our long discussions, as well as our different backgrounds, led to many creative and new arguments, which was one of our strongest points during the competition.

II.B- The Regional Oral European Round

One month after the written submissions deadline was the Regional Oral European Round. The top four teams from each regional round would qualify for the Final Oral Round to be held in Taipei. Two regional rounds were held for Europe. Teams from the same school were sent to different oral rounds, so our team went to the Frankfurt-Oder regional round while the MIDS (Master in International Dispute Settlement) team went to Barcelona.

First of all, we had to determine how to structure our oral pleadings. None of the team members had participated in a moot court competition before, so we were all learning things for the first time. We had to read the rules very carefully to understand how the oral round would work: only three out of the four team members could speak, each for a minimum of ten minutes, not exceeding 35 minutes in total. There were three claims to be made, all of which were very different and complex. We had to try shuffling the order in various ways in order to allocate exactly the right amount of time for each issue. After much deliberation, we divided our roles based on the divisions we had made for the written submissions, so that each speaker would present both the Complainant and Respondent regarding a certain claim. Babette would speak about Claim 1 (the tax regulation's alleged violation of GATT and SCM), Passant would speak about Claim 2 (the patent regulation's alleged violation of TRIPS), Vivian would speak about Claim 3 (the labeling regulation's alleged violation of TBT), and Passant would conclude Claim 3 (the labeling regulation's additional violation of GATT).

In the weeks leading up to the oral rounds, our team met nearly every day. Our practices were a simulation of a real session. We kept strict time, making sure that we finished within our allocated minutes, while our coaches acted as panelists interrupting to ask questions. We made some cards in preparation for the questions, so the team had to also practice locating the relevant cards and passing it to the person who had received a question. This required us to be attentive at all times, to learn each other's parts so that we could anticipate where they may need assistance from the team. And when we were not practicing together, we continued to refine our pleadings. In between classes and internships, we tried to read more case law and to build creative arguments. We practiced alone in front of the mirror, memorizing the complex arguments, trying to get the right tone and speed.

Many guests also came in to help us with our preparation. We met with the MIDS team to have a practice session. Fatine Lemachatti and Dominic Boucsein, team members from the 2007-2008 moot court team, told us about their experiences in the regional and world oral rounds. In fact, Dominic had won one of the 2008 Best Orator prizes and he gave us many advices on how to effectively present our arguments. Learning that Dieudonne Somda, a classmate of ours, was doing his PhD dissertation on TBT, we invited him to come and review our arguments. In the last few days, Professor Pauwelyn came in to give us a final critique and to help answer any remaining questions we had. He pointed out some questions that we had not thought of before. Each guest made an invaluable contribution to our work, and it was also good practice to present the pleadings in front of different people.

This phase of practice was very intense. We had to meet in the evenings after everyone was done with their classes and internships for the day, and the sessions lasted well into late at night. The combination of a long day and a high-pressure competition simulation sometimes broke us down, but overcoming these emotional situations together made us stronger as a team. In the beginning, when we heard about the experiences from last year's team, we had all been nervous because it seemed we were not ready to face the oral rounds. But by the time we were to leave for Frankfurt-Oder, after weeks of hard work,

we were certain that we were well-prepared and had a good shot at qualifying for the Final Oral Rounds in Taipei.

On 19 March 2009, our team met in the Geneva airport at 4:30 A.M. to take the flight to Berlin, from which we took a train to Frankfurt-Oder. Upon our arrival, ELSA organizers helped us to check in. The pleadings were to be held in the building European University Viadrina Frankfurt-Oder. There was a welcoming reception at the town hall during which the order of the preliminary rounds was determined by lot. In the evening, our team went back to our hostel across the border in Slubice, Poland. We stayed in an apartment-style place with individual bedrooms and a common dining area, so we could practice late into the night and leave together in the morning.

Once the preliminary rounds commenced the next day, we could see that the teams at the regional round were very well prepared. Indeed, we learned a lot by competing against them. The panelists commented that the average of this regional round was very high, perhaps higher than at other regionals. After the preliminary rounds, four teams qualified to continue to the Final Oral Round in Taipei. Among them were the team from Barcelona, whom we pleaded against in the first session. Another was the team from Maastricht, whom we learned later had been coached by Professor Peter van den Bossche. A team from UK's London School of Economics also qualified. And, of course, us. We were going to Taipei!

After the oral rounds were over, we had a chance to talk to many of the panelists. Prof. Lorand Bartels, an Australian professor from Cambridge University, who had been the Chair for the semi-finals and finals, gave us some of his opinions on our creative arguments. Ms. Jan Yves Remy and Mr. Christopher Clinton were legal officers from the WTO Secretariat, so we could look forward to meeting them again in Geneva. Dian Balan, a lawyer working in the EC, mentioned that that he was glad to see our team had come to the regionals with the right attitude: to learn, and to have fun. It was a great opportunity to meet with the panelists, as we heard some good advice and made connections which would be helpful for our professional and academic careers in this field.

On the last day, we had some time for sightseeing in Berlin before leaving for Geneva. After weeks of practicing every day, and then going through the pressure of the competition together, our team had become very close. This was a bond different from what we had when we were preparing the written submissions. If we did not perform at our best, it was no longer a matter of our own, we felt like we would be letting the team down. Knowing that everyone in the team felt this way, our trust for each other grew even more, and it motivated us to work even harder. And this would help us to advance to a higher level of performance at the Final Oral Round.

II.C- The World Final Oral Round

Having learned from our experience in the Regional Round, we channeled our energy into improving our weakest points before the Final Oral Round. We held several

brainstorming sessions to find the answers to questions that no one could properly answer during the Regional Round. We read more case law so that we could answer every question down to the paragraph number. Based on the feedback we received from the panelists that they do not like to hear about the usual GATT arguments, we changed the structure of our presentation so that we had more time to focus on the most interesting parts. Babette began with the SCM claim first, and Passant allocated all of her time to the TRIPS claim. As the last person presenting, Vivian would spend most of her time on TBT, and then in the last minute try to hit the main points of the GATT claims.

Also, we had picked up from the Regional Round what was needed for stylistic improvement, as we had learned that presentation skills heavily influence the score in the end. We had to continue practicing on our own to perfect the mooting style of speech. This meant speaking at a slower pace, with more confidence, and better eye contact. Each of us had to keep practicing alone in front of the mirror to memorize our parts to the point that we could be asked a question that throws us off track, but we would be able to return smoothly. Of course the practices were very intense and stressful at times, knowing how far we had come and what was at stake at this point. But knowing that the little things we can fix could be exactly what would award us precious points, our motivation was higher than ever since we were not a lost cause and actually had a shot at placing in the top.

During these weeks of practice, we invited Ms. Jan Yves Remy, the panelist from the Regional Rounds, to one of our sessions. Considering her activity as a panelist, she could not comment on our legal arguments, but she gave us some very helpful stylistic tips. Professor Pauwelyn of course offered his invaluable help once again. He reminded us that we should not sound like a law student answering an exam question, but a real delegate representing a real country. With this important lesson in mind, we were ready to go.

For the first time, the Final Oral Round was not held in Geneva, but in Taipei. The Asian Center for WTO and International Health Law and Policy (ACWH) at the National Taiwan University hosted this year's final round, making ELSA Moot Court a truly global event. Their International Organizing Secretariat arranged the competition to be held at Howard International House from May 19th to May 24th 2009. It was very convenient because all of the participants could stay in one place and go to sessions without having to leave the building.

Four teams from each European regional (the Netherlands, Spain, Switzerland and UK from the Frankfurt-Oder round; and Georgia, Germany, Luxembourg and Romania from the Barcelona round), four teams from the Asia regional (Hong Kong, India, Japan and Taiwan), two teams from the North American regional (Duke University and Kansas University), two teams from the Latin American regional (both from Colombia), two teams from the Pacific Written Round (Australia and New Zealand) were present at this stage. Unfortunately, the team that qualified from the International Written Round could not make it to the final round and did not come to Taipei.

All of the teams at this level of the competition were extremely strong. We all knew that everyone at Taipei were already winners. The legal arguments of the other teams were

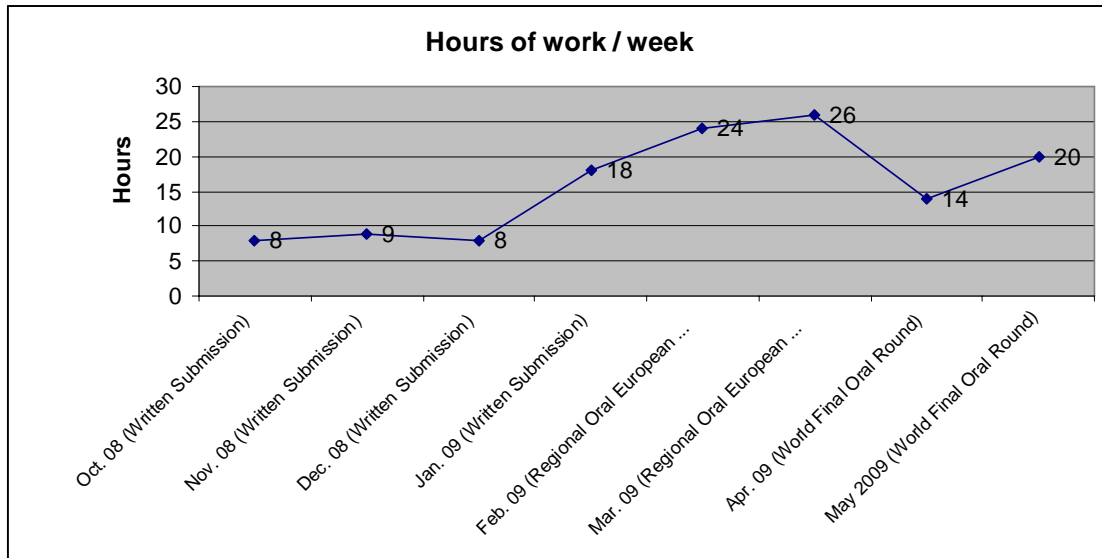
impressive, they had surely spent as much time as we had in preparing for the competition. The oral skills of some teams were extraordinary, particularly the teams from English-speaking countries such as the US and Australia. A great majority of the teams had been participating in ELSA moot court for many years, some of them from the founding year. Our team was an exception in this respect, as it was only the second year the Graduate Institute had a team and none of us had mooting experience, but we felt that we were strong enough to go against the best of teams.

There were several prominent panelists present at the Final Oral Rounds. Everyone was curious to hear what Professor Bradly Condon, the author of this year's case, had to say about whether he expected all of the arguments that the students had made. Professor Mitsuo Matsushita, a founding member of the WTO Appellate Body, was chair at the Grand Finals. We also met Ms. Marie-Isabelle Pellan, Counsellor in the Trade and Environmental Division of the WTO, one of our first panelists. Professor Bryan Mercurio, who teaches at the Chinese University of Hong Kong, School of Law, was the chair for our first session. Ms. Victoria Donaldson, a Counsellor at the WTO Appellate Body Secretariat, who had worked on the China-Auto Parts case, was the chair for our second session where we presented a creative argument as Respondent using GATT Article II. Talking to the panelists after the competition was over was a good opportunity to hear their opinion on our arguments. All of them commented that they were truly impressed with our knowledge on WTO case law, and they wished us the best of luck in our future careers in trade law. Hopefully, this experience has helped us to grow so that we can indeed meet our panelists later down the path as professionals of the same field.

On the last day, we had some time to sightsee in Taipei on tours organized by ELSA. We went to nice Chinese restaurants and went up the Taipei 101. It was a good opportunity for us to talk to the other teams from countries all over the world, which was difficult to do during the competition unless we pled against them. We were reminded that the students we saw in Taipei would become the leading trade lawyers of their respective countries, and that one day we might meet them again in a hearing room or a negotiating table. The Final Oral Rounds was truly an international experience.

Looking back, we realized how much we had grown over the past eight months. Now we know what it felt like to be completely immersed in one case, to live breathe and sleep WTO law, and to obsess day after day about one sentence of the legal text. We learned about the strengths we never knew we had before, and the weaknesses that reveal themselves in stressful situations, and how to overcome them. We developed a passion for trade law, and a level of expertise in this field that few students at our age can say they have. We learned how to cooperate as a team, and how important it is to work together. All of us were proud of what we had achieved.

II.D – Timeline of activities



III – Critical analysis of each team-member:

[This part was omitted in this version of the report]

IV – Graduate Institute-team results and conclusions:

IV.A - Regional round

Although this was the second time that the Graduate Institute was represented at the ELSA Moot Court Competition, it was the first time for everyone in the 2008-2009 team ((i) for the team-members, this is in reality a requirement from this Moot Court; (ii) and for the two coaches, despite previous experiences at other moot competitions, it was the first time at the ELSA Moot Court). Therefore, the anxiety and apprehension of the team before the Regional round was considerably high. However, due to the intensive preparation and training done by all, our expectations were even higher and we successfully managed to classify the Graduate Institute to the World Final round.

IV.B - Final round

The situation was slightly different in the Final round, since the team was significantly calmer and more relax, but the expectations continued to be very high. Based on the comments of several panelists and other participating universities, the level of legal analysis done by the Graduate Institute’s team was very impressive. In fact, at our last pleading, the academic adviser of the opposing team said that our Institute’s team had the most interesting presentation he had attended, since all the legal arguments were extremely well developed and very creative. Despite the fact that the Graduate Institute’s team did not win the Final round of the competition, our two final and decisive

presentations were our best (which was more than expected, since the team noticeably improved with each pleading) and we strongly believe that the Graduate Institute was extremely well represented.

IV.C – Possible improvements and Comparison with the 2007-2008 team

One area that could be improved for future Graduate Institute's teams is perhaps more training on oral skills and debate experiences. The 2008-2009 team invested considerable time developing these skills, and although the entire team was able to improve tremendously in this respect, we were still not at the same level of certain teams, especially those coming from the United States. An option to help this deficiency could be to stimulate debate opportunities for the students in a classroom environment and as extra-curriculum activity, such as a Graduate Institute debate competition. Another possibility could be to include moot court participants in the "communication and presentation skills" workshop, already offered by the Graduate Institute's Academic Advisors.

As mentioned before, this was only the second time that the Graduate Institute sent a team to the ELSA Moot Court Competition. The 2007-2008 team certainly left a great impression, since many participants, panelists and coaches remembered our former team members, coaches and presentations. In addition, the 2008-2009 team was greatly helped by the previous team, since most of them came to some of our meetings to give suggestions and hints on presentation style and arguments. With the 2008-2009 moot court edition, it was very rewarding to see that, despite being a new participant (most of the other universities have been sending teams for several years now), the Graduate Institute is already considered as a strong team by the Organizers and panelists and very well respected by other teams.

V – Budget Report:

[This part was omitted in this version of the report]

VI – Graduate Institute Magazine: *ELSA Moot Court Competition* (to be given to 2009-2010 students)

The ELSA Moot Court Competition on WTO Law is a simulation of a Panel hearing in the World Trade Organization (WTO) dispute settlement system. For the second time in a row, the Graduate Institute team participated in the competition and qualified for the World Final Oral Round, which this year was held in Taipei and where they competed against the world's 19 best teams in the field of trade law.

The WTO Moot is only one of the many competitions that students at the Graduate Institute can participate in. Even though it requires a lot of commitment and effort, it is incredibly rewarding and worth all the effort and energy one puts into it. First of all, it allows you to make great friends. Not just your team members, but also other participants

coming from places like Colombia, Lithuania, India, Australia and the US. Secondly, since the Panels consist of legal experts, a Moot Court experience is a great opportunity to make new contacts and have casual or in-depth conversations with fellow students and authorities in a certain legal field. Finally, any Moot Court competition such as the WTO Moot Court provides you with the opportunity to put theory into practice, thereby complementing your formal (legal) education in an unparalleled manner.

Shortly, it is a crazy, fun, hectic but also very enriching experience. You learn more about law than you would normally do in such a short period of time. In the end, you will be able to participate and contribute to high-level discussions and in some cases you might be able to make experts reflect upon your argument or perhaps even change their opinion. Thus, if you like mooting, learning more in-depth about legal issues, making friends, talking to experts, enlarging your horizon and working hard, then any Moot Court Competition is definitely an experience that cannot be missed!

The 2008-2009 team