



**emc<sup>2</sup>**  
ELSA  
moot court  
competition

***15 Years of ELSA Moot  
Court Competition on  
WTO Law***

**elsa**

The European Law Students' Association





Aim of the EMC2:

To enhance the knowledge  
of international trade law  
and WTO dispute  
settlement procedures



# ABOUT ELSA

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## The Association

The European Law Students' Association, ELSA, is an international, independent, non-political and non-profit organisation comprised of and run by and for law students and young lawyers. Founded in 1981 by four law students from Austria, Hungary, Poland and West Germany, ELSA is today world's largest independent law students' association.



**ELSA Members x 42,000**

## International Board

The International Board is the supreme executive body of ELSA. It represents the Association and is responsible for its everyday running and management. The International Board comprises eight full-time officers working at the ELSA Headquarters in Brussels, Belgium. The members of the International Board are elected by the supreme decision-making body of the Association, during its spring meeting for an annual term that starts on August 1st and ends on July 31st of the next year. The International Board consists of: President, Secretary General, Treasurer, VP for Marketing, VP for Student Trainee Exchange Programme, VP for Seminars and Conferences, VP for Academic Activities and finally VP for Moot Court Competitions.



**ELSA Local Groups x 300**



**ELSA National Groups x 43**



**ELSA International**

## ELSA is present in 43 countries

Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, The Netherlands, Norway, Poland, Portugal, Republic of Macedonia, Republic of Moldova, Romania, Russia, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.

## EMC2

The ELSA Moot Court Competition on WTO Law (EMC2) is a simulated hearing of the World Trade Organization dispute settlement system. Each year, participants from around the world send in written submissions, for the complainant and respondent, in a fictitious case. After sending their submissions, all the teams are given the opportunity to present oral arguments in front of panels which consist of WTO and trade law experts. Winning teams from five Regional Rounds (two European Rounds; an Asia-Pacific Round; an All-American Round and an African Round) compete against each other in the Final Oral Round held in Geneva, Switzerland at the WTO headquarters.

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# Foreword

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**Ada Gawrysiak**  
Vice President for  
Moot Court Competitions  
ELSA International 15/16

## **Dear Reader,**

*The 15th edition of the ELSA Moot Court Competition on WTO Law will mark one of the most important milestones in the history of the biggest flagship project of ELSA.*

*For a long time, the establishment of an international Moot Court Competition was one of ELSA's long-term goals. Today, it has become larger than we could ever imagine. Something*

*that in 2002 was an idea of a European competition for our Members, became a global challenge that is gathering students from all around the world every year. During the past 15 years*

*the ELSA Moot Court Competition has been contributing to the legal education of law students and young lawyers and helping ELSA achieve its vision and purpose.*

*I am happy to present to you the first ever ELSA Moot Court Competition publication – celebrating 15th years of the EMC2. Through the pages of the magazine you will dive into successful EMC2 alumni stories and substantive international trade law articles. I would like to thank all the authors for their valuable contributions that made this publication possible. I invite you to turn the page and to get inspired.*

*Happy anniversary!*

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## Structure of the Competition

### **Written Submissions**

Teams prepare written submissions for the complainant and respondent of a fictive case, which is written by a trade law professional.

### **Regional Rounds**

There are 5 Regional Rounds that serve as elimination rounds. They are taking place all over the world: American Round, Asia-Pacific Round, two European Rounds and an African Round.

### **Final Oral Round**

The best 20 teams from the Regional Rounds qualify to the Final Oral Round, which annually takes place in Geneva, Switzerland.



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# *The ELSA Moot Court Competition on WTO Law - For the Love of the Next Generation of Trade Lawyers*

By M. Goldstein, V. Hughes, G. Marceau, L. Nielsen, L. Raschella-Sergi, C. Wakoli, and I. Zebryte

## **Introduction**

*After 15 years, what started as a European students' initiative, has now become a broadly international and critical element in training future trade lawyers. On the occasion of the fifteenth anniversary of the ELSA Moot Court Competition on WTO Law, we draw the main lines of the evolution of this unique relationship between the WTO Secretariat and ELSA.*

## **The Evolution of the Relationship between ELSA and the WTO**

### **The birth of the ELSA Moot Court Competition on WTO Law**

In July 2002-2003, the entire team of ELSA International led by its President Bettina Kuperman (Denmark) pledged to finally launch the first ELSA Moot Court Competition on WTO Law (at the time known as EMC2) in the ELSA Network, with the first Final Oral Round in 2003 (FOR). Mark Refalo in his capacity of Vice President of Academic Activities (VPAA), the area under which the moot court competition functioned in ELSA, was the first head of the organizing committee and invited Ieva Zebryte (Lithuania) to become the first ELSA International Director for Moot Courts. Subsequently, Ieva became VPAA in 2003-2004 and Americas Academic Supervisor from 2005-2012.

Letizia Raschella-Sergi, an Australian-Italian, became involved while she was teaching law and international relations at Bond University. Letizia was invited to the ICM Alayna Turkey in the Spring of 2002, given her expertise in clinical legal education and knowledge of WTO Law. She gave life to the project and quickly became Ieva's closest collaborator and the "heart and soul" of this moot court competition. Between 2002 and 2012, the invisible hand building up and preparing the annual competition was Letizia. Initially ELSA

did not have much experience with moot court competitions, international relations or diplomacy. It was Letizia who guided and was the advisor to this amazing project.

### **The rise of non-European Regional and Final Rounds and Academic Supervisors**

In 2003-2004, Letizia was asked to organise the first Regional Round to be held outside of Europe. Known as the Asia-Pacific Regional Round it was held in Queensland, Australia. The event included teams from Australia and the Pacific. In 2004-2005, the Australian competition was expanded to include teams from South East Asia. In addition, a second non-European regional round was introduced in 2004-2005, thanks to Ieva, and covered the Latin American countries. The event was held in Santo Domingo, Dominican Republic and was hosted by COLADIC-RD.

The ELSA International Board changes every year, as it is comprised of students taking time off from their studies. With the success of the first non-European Regional Rounds, ELSA International quickly realised that the change of ELSA's executive Board Members every year could lead to the loss of institutional memory of the moot court organisation. Consequently, a decision was made to appoint Academic Supervisors. In 2004-2005 ELSA International appointed Letizia as the Asia-Pacific Academic Supervisor and in 2006 Laura Nielsen (based at the University of Copenhagen) was named European Academic Supervisor. That same year, Ieva was named Academic Supervisor for the Americas (2006 – 2012).

In 2006-2007 ELSA divided its European Members into two ELSA Regional Rounds, which are held in different locations each year. It was also decided to split the Asia-Pacific Regional Round into two competitions. The Pacific Regional Round was held in Adelaide, Australia, and hosted by the University

of Adelaide - Institute for International Trade -, while the Asia Regional Round took place in Taipei City and was hosted by National Taiwan University's Asian Centre for WTO Law. In 2007-2008, a fourth Regional Round was added in North America, and took place in Washington, DC. Ambitions to include an African and a Middle East Regional Round were discussed and researched as early as 2006-2007, and appeared in the report of the Final Round in Santo Domingo in 2009-2010.

The rise of preliminary regional competitions was a great success and contributed extensively to the internationalisation and professionalism of the competition but more importantly to the value in the outreach of WTO law. But with an increasing number of regional elimination rounds, the challenges of the FOR were growing in significance and difficulty. This led to the first crisis in 2007-2008 of the ELSA Moot Court Competition on WTO Law when ELSA International took steps to terminate the competition due to the financial burden in hosting the FOR annually in Geneva, Switzerland. The Academic Supervisors devised a temporary solution to rescue the event: holding the FOR outside of Geneva in order to remove the financial burden from ELSA International and give the entity time to reorganise its structure and financing.<sup>1</sup> Between 2008 and 2012 the FOR did not take place in the WTO.



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### **The beginning of the ELSA/WTO relationship**

In 2002 Hans Lederer (VPAA) and Li Axrup (Secretary General) first approached the WTO to explore the feasibility of holding a competition on WTO Law and the possibility of co-operation with the WTO Secretariat. They approached Bernie Kuiten from External Relations and Gabrielle Marceau, Counsellor in the WTO Legal Affairs Division and Associate Professor at the University of Geneva on WTO Law, for assistance in reviewing the moot case, the bench memo, and finding panelists for the competition. In 2003-2004 Gabrielle was on the Case Review Board. In the same year, Valerie Hughes, then Director of the Appellate Body Secretariat agreed that staff from her division interested in assisting the competition could do so on work time. Together Valerie, Gabrielle, Victoria Donaldson (ABS), Maria Pereyra (LAD), Jan Bohannes (ABS), and a few WTO staff worked in the first years of the project to assist ELSA to make it truly professional and academically robust.

These early friends of ELSA in the Secretariat made an essential contribution to the success of what is today a truly international competition. Valerie continued her support for the project when she returned to the WTO as Director of the Legal Affairs Division in 2010. Valerie and Gabrielle have been loyal supporters of the competition, through their efforts to help ELSA continue to improve the academic quality, accessibility, and fairness of the competition. In 2004, ELSA created two prizes under the names of Gabrielle Marceau for the Best Complainants' Written Submission and Valerie Hughes for the Best Respondent's Written Submission.

### **The WTO technical assistance program recognizes the professionalization of the competition**

At the beginning, the involvement of WTO staff was informal. Soon efforts were made to integrate such participation in the formal WTO trade-related technical assistance activities (TRTA). This was made possible thanks to the expansion of this competition and its increased professionalism, due to valuable contribution from Letizia, Ieva, and Laura, the continued support of ELSA moot directors, and the enhanced involvement of WTO staff members.



Specifically, Letizia, Ieva, and Laura provided the continuity and institutional memory necessary for the stabilisation of the competition, as the ELSA International executive changed annually. The functioning of the competition, the drafting of all the rules and materials, the involvement of serious panellists and sponsors, the expansion of regional rounds, as well as many aspects of the supervision of the moot court competition process were initially established during that period.

In parallel, WTO staff increased their assistance to the moot court competition, and many of the activities relating to the ELSA Moot Court Competition on WTO Law ("ELSA WTO Law Moot Court Competition") are now integrated in the WTO Technical Assistance program. This is so because in addition to the direct training of government officials of developing countries, the WTO also supports the global development of international trade law and WTO-related studies under the WTO's Academic Support Programme, headed by Gerardo Thielen. The WTO has also supported several regional moot court competitions on WTO Law. In this context the WTO recognized the value of the ELSA WTO Law Moot Court Competition and in 2008 began to cover the participation costs of WTO staff members who travelled to act as panellists in regional rounds and in the Final week of elimination, when held in a developing country. WTO staff members were also generally allowed to act as panellists in the European Regional Rounds when ELSA covered the costs of their participation and when the final week took place in Geneva. In 2010, Marisa Goldstein (LAD) and Kaarlo Castren (ABS) started coordinating the participation of WTO staff in the ELSA WTO Law Moot Court Competition in regions and for the FOR under the WTO TRTA.

### **The successful launch of the African Round**

In 2012, Director-General Pascal Lamy who supported the ELSA WTO Law Moot Court Competition since its inception when he was EC Trade Commissioner, enquired as to why there were no African teams in the competition. For him, the competition had to be truly global and accessible to participants from all over the world in order to be valuable. He decided that additional WTO technical assistance should be provided to support the participation of African teams in the competition. Although some African law schools had conducted their own moot court competitions on WTO Law, it had not been possible to establish regional rounds in Africa for the ELSA WTO Law Moot Court Competition. Efforts to ensure the launch of the African Round were spearheaded in 2013 by the then Deputy Director General Valentine Rugwabiza, and Chibole Wakoli (ABS) was asked to coordinate the implementation of the new African regional round.

For the first time, not only did the WTO provide human resources towards the ELSA moot court competition, but it also provided significant financial support. The WTO provided approximately CHF 63,000 out of the technical assistance budget funded by WTO Members to ensure the successful launch of the African Regional Round in 2013-2014 with 7 teams competing at the University of Witwatersrand in Johannesburg, South Africa. This sum, along with generous contributions from a number of institutions, firms, and private contributors covered the costs of flying and lodging all participating teams in the inaugural African Regional Round, as well as the costs for the participation of the three best African teams in the FOR, in Geneva. The second African Regional Round held in 2014-2015, received approximately CHF 20,000 from the WTO, through Norway's contribution to the WTO's Global Trust Fund, to facilitate the participation of the three best teams in the FOR in Geneva after 8 teams competed in Johannesburg. Sponsors and private donors also made contributions.

The WTO remains a strong supporter of the African Regional Round, but the goal has always been to work towards a Regional Round that is sustained with the support of local sponsors and long term institutional partners, similar to the other regional rounds. The strategy in this regard was borne out by the success in 2015-2016, of the third African Regional Round. In this third year, the WTO provided only technical support. The financial support was provided by local, regional and international sponsors, most notably, the United Nations Economic Commission for Africa (UNECA) – who made possible the participation of 10 teams in the third African Regional Round that was held at Rhodes University in Grahamstown, South Africa. Additional donations also facilitated the participation of the three best teams in the FOR in Geneva.

### **The 2012 difficulties and the institutionalisation of the ELSA/WTO relationship**

After serious logistical and budgetary problems with the FOR held in Montpellier in 2012, it was decided to re-evaluate how ELSA International had structured the financial and organisational aspects of the competition with the goals of increasing transparency, efficiency, and quality. For years the Academic Supervisors wanted to tighten the relationship between ELSA and the WTO with a view to stabilizing the competition. After the 2012 saga, a choice had to be made: "make it or break it"! It was decided to make it better!

The WTO requested more commitments from ELSA International with the regional rounds, more continuity



between the policies and actions of each Vice President for Moot Court Competitions and more transparency on the use of participants' fees and donations. In return, the WTO increased its commitment. Marisa was asked to coordinate the participation of WTO staff in regional rounds and the hosting of the FOR in Geneva and Gabrielle was to be responsible for the substantive and financial aspects of the competition. They were assisted by other WTO staff members in this work. The Secretariat staff members now had ELSA responsibilities as part of their official duties. The WTO Secretariat decided to get further involved in the substantive work of the competition in assisting with the selection of the Case Author and the supervision of the student-participants' work, as well as in acting as panellists.

In that context, participation in regional rounds and the FOR, when involving teams from developing countries and in Geneva was confirmed as integrated into the WTO Technical Assistance Annual Plan, thanks to Valerie, Werner Zdouc, Director of the Appellate Body Secretariat and Johann Human Director of Rules Division, the WTO dispute settlement directors, as well as the Director of WTO's Institute for Training and Technical Cooperation (ITTC), Bridget Chilala. The relationship between ELSA and the WTO Secretariat was therefore institutionalised.

### **The creation of the Academic Board**

In the context of efforts to improve the transparency, quality and stability of the competition, Werner suggested the creation of a new Academic Board, composed of academics, prominent practitioners and members of the Secretariat who would provide regular substantive advice on the moot case and the bench memo, as well as management advice on various matters relating to the rules of the ELSA WTO

Law Moot Court Competition. The new Academic Board institutionalised some of the work previously developed by the Academic Supervisors. The Academic Board serves an important role in advising the ELSA Vice President for Moot Court Competitions on matters where they have a wealth of experience and institutional memory not only from ELSA, but from other moot court competitions as well. Currently, Carlo Gamberale and Kaarlo Castren, from the Appellate Body secretariat, are the WTO representatives on the Academic Board, which includes 22 members.

Reassured that the ELSA WTO Law Moot Court Competition was going to continue and grow under the new arrangements, satisfied in having succeeded with institutionalizing the collaboration between the WTO and ELSA, and having seen the Competition developing into a serious academic training tool that is recognized internationally, Letizia, Ieva and Laura resigned from their roles as Academic Supervisors of the ELSA WTO Law Moot Court Competition in July 2012.

### **The involvement of many private and other non-governmental supporters and sponsors**

ELSA has always had institutional sponsors. However, in 2013 special efforts were made to involve more law firms and private sponsors and to encourage private donations. The institutionalisation of the ELSA/WTO relationship allowed for new collaboration between ELSA and law firms, IGOs, NGOs and think-thanks. Relations with existing and new law firms formalized and sponsorships increased. Several private donations were received thanks to the implementation of a PayPal donation option right on the ELSA website. In the first year that ELSA accepted individual donations, almost 14,000.00 EUR were collected in addition to new sponsorships; this encouraged further efforts in the following years and



spurred recent activity to develop a specific scholarship fund for students in need.

In 2015 King & Spalding and Van Bael & Bellis were Platinum sponsors, while Lakshmikumaran & Sridharan, Mayer Brown, Sidley & Austin, Steptoe & Johnson, White & Case, and the World Trade Institute were Gold sponsors. Other law firms and sponsors provide smaller contributions. The Graduate Institute in Geneva is a technical supporter, while the University of Barcelona IELPO programme is an academic supporter. In addition, UNECA, ICTSD, and SIEL currently sponsor the African Round. Other entities, such as the ACWL have provided support through the provision of panellists and prizes.

### **Roberto Azevêdo, WTO Director-General, becomes the Patron of the competition**

In 2015, WTO Director-General Roberto Azevêdo, an experienced WTO litigator, expressed his personal and institutional support for the competition when he agreed to become the formal Patron of the ELSA WTO Law Moot Court Competition. In doing so, DG Azevêdo gave his imprimatur to the competition and made it abundantly clear that the WTO Secretariat was proud to collaborate with ELSA



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in the ELSA WTO Law Moot Court Competition. Aegyoung Jung, legal advisor to the DG, and an experienced panellist for ELSA, assists DG Azevêdo in his support of the competition.

### **The ELSA WTO Law Moot Court Competition is mutually beneficial to ELSA and the WTO**

#### **What are the recognized benefits of the competition for participants?**

There is no doubt that the competition has been instrumental in fostering awareness and in-depth study of the WTO and its dispute settlement system in universities in many parts of the world. It has generated interest in the WTO, and provided invaluable practical training as well as networking experiences for participants and the universities that are involved. This experience cannot be received in a classroom, but is nevertheless an essential part of a complete legal education. Many universities offer academic credit for students' participation in the competition. By practicing and seeing for themselves how the WTO dispute mechanism works, participants gain a unique advantage for later career purposes. In addition, participants develop legal drafting and oral advocacy skills in English, which is not a native language for most of them. Participants, and particularly coaches, develop management skills, delivering results within tight deadlines and under stressful conditions.

Enriched with this practical experience, many ELSA WTO Law Moot Court Competition participants go on to careers in international trade law or economics as academics, government officials, private practitioners, working for the WTO or other IGOs or NGOs or think-tanks. And this is also where the benefits for the WTO and the WTO community lie, as further discussed below.

The competition enjoys wide recognition as a proven tool for professional training. At the recent Delhi (India) conference commemorating 20 years of WTO dispute settlement, Professor Matsushita included in his slides on tools to improve capacity of developing country actors, the benefits of participating in the ELSA WTO Law Moot Court Competition!

The Competition has truly become international. In 2015, there were teams from 5 continents, two thirds of which include participants from developing countries. IGOs, NGOs, universities, private law firms and personal donors from all over the world support this Competition, because they all have come to know what the WTO also knows: that this competition is often the starting point of a lifelong journey

into the world of international trade law, and that it can serve as a unique launching pad for wonderful careers.

### **The WTO's particular interest in this competition**

The competition, particularly as it has expanded across the globe, has been helping the WTO achieve one of its key objectives, namely to "ensure that developing countries, and especially the least-developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development".

A more specific goal of the WTO TRTA is capacity building in the area of dispute settlement, because it is crucial that all WTO Members understand WTO rights and obligations and how to enforce them. Although much of the WTO Technical Assistance activities are directed at serving government officials, WTO support for the ELSA Moot Court Competition on WTO Law is part of its long term strategic interests in building capacity. By reaching out to students and developing their interest in WTO Law from an early stage, the WTO helps create a cadre of trade lawyers who will one day serve their governments or private clients, or who might even find themselves in the very corridors of the WTO. Indeed, many of today's WTO delegates in Geneva or capital based officials dealing with trade law, have participated in the ELSA Moot Court Competition on WTO Law. Many of the interns and staff members in the WTO legal divisions have also participated in the Competition.

### **Conclusion**

From the early years, WTO participation in the ELSA Moot Court Competition on WTO Law has blossomed. Today, staff throughout the Secretariat working in Legal Affairs, Rules, Council and TNC, Market Access, Services, Intellectual Property, Trade Policy Review, Accessions, and the Director-General's Office have taken part in the Competition as panellists in Regional and Final Oral Rounds, marking written submission, and reviewing the Case. When the regional rounds include participants from developing countries, WTO staff participation is considered part of the WTO's capacity building mission. The Academic Board composed of international experts also includes WTO staff. The WTO is now the permanent host of the FOR and is pleased to welcome the students who have accepted the challenge to compete on the global level having proved themselves in their regional rounds.

Today, the relationship between the WTO Secretariat and ELSA is stronger and better institutionalised. Both the WTO

and ELSA international have been able to adjust and grow further. Special thanks are due to a series of excellent ELSA Vice Presidents for Moot Court Competitions, namely Corrina Mückenheim, Oda Linneberg Uggen, Tanja Sheikhi, and Ada Gawrysiak, extraordinary women who have taken on the challenge of running this global competition at a very early stage in their academic lives. Within the WTO, the ELSA WTO Law Moot Court Competition has benefited from supportive Directors as well as dedicated WTO staff members who consider participating in the Moot Court Competition, a labour of love. They all believe that an international Moot Court Competition on WTO law is beneficial to students in the short and long term, and this view is shared by several WTO delegations, the WTO Secretariat, other IGOs, law firms, NGOs, universities and others.

Each year it is a new challenge! Each year we begin anew with a new ELSA team, new regional round organizers and a new Case Author. Each year the Competition evolves and hopefully improves, and each year, the WTO is eager to once again partner with ELSA in this extraordinary endeavour that spreads knowledge and understanding of trade law to the furthest corners of the world. Furthermore, each year the reach of this Moot Court Competition expands. In 2015-2016, the ELSA WTO Law Moot Court Competition had five Regional Rounds, spread across four continents, with 225 students from 75 Universities and from 39 different countries, hoping to plead as finalists before the Final Bench, chaired by Ricardo Ramirez from Mexico, member of the Appellate Body.

After 15 years, what started as a European students' initiative has become a broadly international and critical element in training future trade lawyers and the WTO Secretariat is pleased and proud to have been associated with this now universal Competition on WTO Law, which is so beneficial to the entire WTO system.

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<sup>1</sup>The first "FOR on Tour" took place in 2008-2009 in Taipei City and was led by Letizia in co-operation with the Asian Regional Round Organiser – National Taiwan University's Asian Centre for WTO Law. The second "FOR on Tour" in 2009-2010 was held in Santo Domingo, Dominican Republic and was led by Ieva in co-operation with the inaugural Latin American Regional Round Organiser – COLADIC-RD. In 2010-2011 the FOR returned to Europe and ELSA International in co-operation with ELSA Switzerland organised the event in two locations, Evian, France for the Preliminary Rounds and Geneva, Switzerland for the Grand Final. In 2011-2012 ELSA International sought expressions of interest from the ELSA Network and it was decided to hold the competition in Montpellier, France. The FOR was jointly organised by ELSA France and ELSA Montpellier.



# Introduction to the WTO Dispute Settlement Mechanism



**Santiago Wills<sup>1</sup>**  
Head of International Trade  
and Investment  
Lewin & Wills

**International Trade is one of the most important drivers of world's economy. According to data collected by the World Bank, trade (in goods and services) accounts to nearly 60% of the world's GDP.<sup>2</sup>**

The biggest part of the success and growth on trade throughout the years is due to the constant efforts of the World Trade Organization (WTO) and its Members in keeping a stable, predictable and dynamic multilateral trading system. This trading system is based on rules governing conducts among the Members of the WTO, agreed upon in the Marrakesh Agreement Establishing the WTO (WTO Agreement) and its Annexes (together WTO Agreements). Even before the establishment of the WTO as a trade organization, the GATT Contracting Parties (predecessor to the WTO) had already recognized the importance of maintaining healthy trade relations among States.

The rules set out in the WTO Agreement and its Annexes comprise most of the aspects surrounding trade relations, such as trade in goods, trade in services, trade remedies, intellectual property rights and non-tariff barriers among others. Moreover, they seek to provide the adequate conditions for raising standards of living, attainment of full employment, growth of real income and effective demand, and the expansion of production of, and trade in, goods and services<sup>3</sup> – taking into account the need for preservation of the environment and the particular needs of developing and least developed countries.

Given the importance and impact of the WTO rules, it is not strange to find different interpretations and applications among WTO Members. This naturally raises claims of potential non-

compliance of a particular law or practice of one Member with regards to the WTO rules. For such reasons, within the WTO legal framework we find its dispute settlement mechanism, considered as “perhaps the most significant achievement of the Uruguay Round negotiations,”<sup>4</sup> which provides a system to resolve the said claims. This system of dispute settlement rules is found under Annex 2 to the WTO Agreement, known as the Dispute Settlement Understanding (DSU).

The WTO dispute settlement system thus provides the Members with the jurisdictional forum to submit any claim falling under the scope of the WTO rules. This jurisdiction is compulsory by nature - as established by Article 23.1 of the DSU - obliging the complaining Member to submit its claim under this dispute settlement mechanism and providing no choice for the respondent Member but to abide and accept its jurisdiction. Although usually trade matters touch upon private entities, it is important to take into account that the WTO dispute settlement system is only available to Members of the WTO and not to private parties.

A fundamental element of the WTO dispute settlement mechanism is the first formal stage of the dispute, namely the consultations stage. Although in practice Members of the WTO informally initiate talks with a view of solving trade irritants, once the complaint is submitted before the WTO, the Members must enter into a formal consultations stage, where an amicable solution is sought. This stage has permitted several Members to resolve their trade irritants without the need to reach into a further and more legalistic approach before a panel of experts.

However, if no mutual solution is reached at the consultations stage, the complaining Member may request the establishment of a panel before the Dispute Settlement Body (DSB – body in charged of administering the dispute settlement system).<sup>5</sup> The

panel will thus be mandated to resolve the issues surrounding the claims, in accordance with the terms of reference set out for such particular dispute. Members different from the complainant and respondent may request that their substantial interest in the matter to be taken into account, and may request to participate in the dispute as a third party. According to the DSU procedures, the panel has up to nine months from its establishment to submit its report to the DSB for its adoption.

Nevertheless, the complainant or respondent may appeal such report, initiating the appellate review procedures. During the appellate review stage, the Appellate Body has 90 days to submit its report to the DSB, with its mandate limited to issues of law covered in the panel report and legal interpretations developed by the panel.<sup>6</sup> Unlike a panel that is composed on an ad hoc basis for each dispute, the Appellate

Body is a standing tribunal-like institution composed of seven experts for periods of four years (renewable once for a total of eight years).

Further to the traditional panel and Appellate Body stages, Members may have recourse to 'reasonable period of time', non-implementation, retaliation, and cross-retaliation procedures set out in the DSU. These procedures are also administered by the DSB. Although it is not the purpose of this article to treat in depth the different WTO procedures, it is worth noting that the existing procedure to 'retaliate' – or in WTO jargon to "suspend concessions" – is one of the reasons why this dispute settlement mechanism is so successful. If a Member is not complying with its WTO obligations, the affected WTO Member, regardless its size, may suspend concessions (i.e. retaliate) to such Member, provided it is authorized by the DSB. Although in some cases the suspension of concessions







is not entirely efficient, it does create additional leverage, especially for smaller or less developed WTO Members, to help enforce their rights within the organization.

*It is of paramount importance to understand that, as has been already established in several WTO proceedings, WTO Law finds itself within a larger framework of Public International Law. The WTO Agreements are international treaties, and as such they must be treated accordingly. In particular, special emphasis has been given to the adequate use of the customary rules of interpretation under Public International Law, as codified by the Vienna Convention on the Law of Treaties (1969, in force since 1980). This has played a major role in the development of WTO rules, as the adjudicators, both at the panel and appellate review stage, must interpret the WTO Members' rights and obligations following these rules of interpretation.*

*Today, having administered more than 500 disputes, the WTO dispute settlement system is arguably the most prolific<sup>7</sup> dispute resolution system in International Law, and one of the most trust-worthy. Its importance goes beyond the resolution of particular trade disputes, and as it is explicitly stated in Article 3.2 of the DSU, the dispute settlement mechanism is a “central element in providing security and predictability to the multilateral trading system”. Not mistakenly it has been widely referred to as the “crown jewel” of the WTO.*

<sup>1</sup>He may be reached at [swills@lewinywills.com](mailto:swills@lewinywills.com).

<sup>2</sup> See: <http://data.worldbank.org/indicator/NE.TRD.GNFS.ZS/countries/1W?display=graph> - World Bank's website. Last visited on 16 May 2016.

<sup>3</sup> Preamble to the WTO Agreement.

<sup>4</sup> Palmetier, David and Mavroidis, Petros, *Dispute Settlement in The World Trade Organization*, Second Edition. Cambridge University Press, UK, 2004. p. 16.

<sup>5</sup> Although usually Members will have recourse to the panel stage, the DSU allows for other adjudicating procedures such as arbitration, conciliation, mediation and good offices.

<sup>6</sup> DSU, Article 17.6.

<sup>7</sup> Expression used by Van den Bossche, Peter, *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, second edition, Cambridge University Press, UK, 2008

# How to get Involved in the 15th Edition



**Christine Beck**  
Vice President for  
Moot Court Competitions  
ELSA International 16/17

**The 15th edition of the ELSA Moot Court Competition on WTO Law will be launched on the 15th of September 2016.**

You can be part of it by registering your team which should consist of 2-4 students from one university on our website [elsamootcourt.elsa.org](http://elsamootcourt.elsa.org).

On our website you will not only find the case and all the needed information for taking part in the global challenge,

but also the chance to support teams in financial need, both for the Regional Rounds as well as the Final Oral Round in the headquarters of the WTO in Geneva. Even a small donation will have a big impact on the legal education of students all over the world and will give everyone the possibility to contribute to the trade law community.

See more on [emc2.elsa.org/partners](http://emc2.elsa.org/partners).

**“Continued support for ELSA is crucial to ensure the sustainability of the competition in all regions and to make it accessible to more and more students from developed and developing countries, as well as from LDCs. Therefore, support for ELSA allows us to ensure that tomorrow’s law graduates are prepared for the critical task of supporting the international trading system.”**

*- Pascal Lamy, Former Director General of the WTO*

Face the global challenge with us and shape the future of trade law! We look forward to celebrate the 15th anniversary of the ELSA Moot Court Competition with you in six amazing cities!

“ Face the global challenge with us and shape the future of trade law!

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# Protectionist Intent in WTO National Treatment Obligations



**Lorand Bartels**  
Senior Lecturer in Law  
and Fellow of Trinity Hall,  
University of Cambridge

**What is the main purpose of the WTO legal system? Is it to stop its members from protecting their domestic industries? Or is it about requiring them to regulate in a sensible manner, even if protectionism is not involved?**

These questions underpin one of the oldest debates in WTO law, which is whether WTO national treatment obligations should only prohibit measures which the regulating WTO

member intended to protect domestic products or services from competition from imported products or services, or whether these obligations go further, and also prohibit measures that have protectionist (or discriminatory) effects, even without if they were adopted for protectionist reasons.

The reason that the debate continues, even today, is that the wording of the relevant obligations is singularly unhelpful. The policy underpinning the national treatment obligation in the GATT 1994 is set out in Article III:1, which states that measures ‘should not be applied to imported or domestic products so as to afford protection to domestic production’. But the phrase ‘so as to’ is ambiguous on the critical point: it can mean that there is an intention to afford protection or that there is merely an effect of affording protection.

This does not always matter. The first sentence of Article III:2 of the GATT 1994 prohibits domestic taxes on imported products that are ‘in excess of’ those imposed on domestic products. As the Appellate Body recognised in Japan – Alcoholic Beverages, its second report, a violation of this obligation does not depend on establishing, separately, that such a tax has a ‘protective application’ (whatever this might mean).

Interpretive difficulties begin with the second sentence of Article III:2, concerning dissimilar taxes on ‘directly competitive or substitutable’ products (traditionally seen as a larger category than that of ‘like’ products). Such taxes are prohibited, but only when they are also contrary to the principles set out in Article III:1, namely, that they are applied so as to afford protection. On this point, the Appellate Body said in Japan – Alcoholic Beverages that ‘[t]his is not an issue of intent’. Rather, it is an issue of the ‘protective application’ of the measure, this being ‘most often discerned from the design, the architecture, and the revealing structure of a measure.’ But this does not answer the question whether, in looking at the measure, is one looking for evidence of intention or is one looking for evidence of likely effects.

In Chile – Alcoholic Beverages the Appellate Body elaborated, by saying that ‘the statutory purposes or objectives – that is, the purpose or objectives of a Member’s legislature and government as a whole – to the extent that they are given objective expression in the statute itself, [may be] pertinent’. But not only in this dispute, but also in those that have followed, there have always been clear discriminatory effects. Two questions remain unanswered: does the second sentence of Article III:2 prohibit a measure that has discriminatory effects in the absence of an ‘objective’ protectionist intention? And does this provision prohibit a measure that has an ‘objective’ protectionist intention by not discriminatory effects? We do not know.

When it comes to national treatment obligations applicable to regulatory measures, the relevant texts are not so much ambiguous as silent. Article III:4 of the GATT 1994, Article 2.1 of the TBT Agreement, and Article XVII of the GATS prohibit ‘less favourable treatment’ of imported as opposed to domestic products and services. This says nothing at all about whether ‘less favourable treatment’ depends on a protectionist



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intention. It is therefore significant that the Appellate Body has decided that WTO obligations with this wording do not require any demonstration that the regulating WTO member had a protectionist purpose in adopting its measure. It is sufficient that there is – or at any rate is likely to be – a discriminatory effect on imported products and services. For products, this has become increasingly clear over time, and was established conclusively in *EC – Seal Products* and *US – Clove Cigarettes*. In *Argentina – Financial Services*, decided this year, the Appellate Body said the same applied to services.

So the jurisprudence on national treatment obligations has swung fairly in favour of an effects test, with a possible, but so far not particularly relevant, exception for the second sentence of Article III:2 of the GATT 1994.

Some have decried this development, or even denied that it has happened. But does this really matter? As said, a measure will not be prohibited by WTO law if it can be justified on public policy grounds, and this requires in all cases that the measure was adopted for a legitimate – which is to say, non-protectionist – purpose. This is backed up by the overarching condition, set out in the chapeau to the general exceptions, and which almost certainly applies also to Article 2.1 of the TBT Agreement, that measures must not be a ‘disguised restriction on international trade’, which most likely means that they are not adopted for ostensibly legitimate purposes that ‘disguise’ actual protectionist purposes.

In practice, what this means is that instead of a complainant having to argue that a measure violates a national treatment obligation because it has a protectionist purpose, it is for a respondent to argue that a measure is justified because it does not have a protectionist purpose. And this makes intuitive sense. A complainant is best placed to argue about the effects of a measure on its exports, while a respondent is best placed to argue about why it adopted a measure.

There are still some differences between a complainant arguing for a protectionist purpose and a respondent arguing for a non-protectionist purpose. At least for the GATT 1994 and the GATS, the list of legitimate public policy reasons

for adopting a measure is exhaustive. But there has never yet been a dispute in which this list has proved insufficient, nor is it easy to envisage a situation in which it might be. Another is that, for the same agreements, the burden of proof now falls on the respondent, rather than the complainant, but given that the respondent is best placed to demonstrate why it adopted a measure, this seems appropriate. But even these differences are not, or at least not unreservedly, applicable to the ‘legitimate regulatory distinction’ test in Article 2.1 of the TBT Agreement.

There are also some who say that it sends the wrong signal to say that a measure violates a WTO obligation, even if it is ultimately excused by a WTO exception. But, with respect, this is sorely mistaken. In any legal text, obligations and exceptions must be read together. A measure that is justified by an exception no more violates a WTO obligation than a state that acts in self-defence violates the prohibition on the use of force.

In sum, the debate on the role of protectionist intention in WTO national treatment obligations has effectively been settled. With the possible, and not very important, exception of the second sentence of Article III:2, the Appellate Body has made it clear that the intention of the regulating WTO member is irrelevant at this stage, and that instead it is relevant for the public policy exceptions. But so what? If one looks at the consequences of this balance, the result is fairly much the same, both in terms of the likely results of individual disputes and in terms of what this says about the WTO legal system. And what it says is that the WTO legal system permits its members to adopt trade restrictive and discriminatory measures for a raft of non-protectionist reasons, provided that they do so in a rational manner. It is difficult to see what is so objectionable about that.

# Standing on the Shoulders of Giants

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**Mark Refalo**  
Partner  
Refalo & Zammit Pace  
Advocates, Malta

**When Ada asked me to say something about the first edition of ELSA's Moot Court Competition on WTO Law it immediately brought back a number of memories. I remembered that my first impression of Geneva was not good: we had got lost in some anonymous street filled with boring sixties-looking blocks, this after having spent a day and a night in a chalet on a French mountain. The reason why we were commuting to Geneva from**

**Lyon for a whole week in order to organise the event was that despite all the planning and discussions that had taken place before we had left out one crucial aspect.**

ELSA and moot courts go back a long way. ELSA used to collaborate with various moot courts both at international and local level and it still does. At that time, following years of collaboration, but also of misunderstandings with other moot courts, we felt that we would be better served with a moot court to call home. An international moot court which could guarantee participation to all ELSA members and assist the ELSA groups organising it.

Being law students no dream could go without a debate, so all sorts of fundamental aspects were discussed:

We discussed the subject it would focus on which was the source of intense debate. We all had our favourite one. Then someone (it may have been the Danes, and I believe it was appropriately enough suggested during the Oresund ICM of Autumn 2000) mentioned trade law; International Trade Law to be precise. At the turn of the century, trade law was in the media spotlight. Unfortunately it was generally negative: newspapers would delight in showing the protests that took place around each round of WTO and pre-WTO talks. Protesters argued that

globalisation was simply the new colonisation. As law students we saw things differently, we understood that what matters is knowledge of the rules, because rules would always exist. Law is not to be feared but understood.

At the same time only few universities gave students the opportunity to study this legal system. The more cautious of us realised that it would be difficult to organise such a moot court, but the more ambitious, which most law students are, saw this failure of our faculties as the very reason to focus on this legal system.

We also discussed, at length, the form of the competition and eventually agreed that it would be completely international. Although the moot court was originally planned to cater for the needs of our members, at ELSA International we marketed the moot court internationally and immediately saw the amount of interest there was in the topic. However, this decision of opening the competition to law students across the globe did not come naturally and I still remember having midnight discussions at the Athens ICM in March 2003 with a number of groups who felt that the competition should be reserved only to our members. This was just weeks before we invited the first participants to the competition in Geneva! Of course, eventually, everyone understood that a competition is only worth its salt when it gives you the opportunity to compete against the best.

I should point out that then the structure was different from how it has been described to me today. There were no regional rounds, and given the above reservations, any ELSA National Group that organised a national round for its faculties was guaranteed a spot in Geneva. In the event there were five national competitions. The other seven teams had to be chosen on the strength of their written memorials; if I remember correctly these seven had to be chosen from 40 teams coming from 18 European countries and the USA.



The national competitions were organised because many had little experience in International Trade Law and simply organising a national event was enough to generate interest in the topic and attract national experts to help.

We also discussed, but not very deeply, how we would greet participants: Geneva was one of Europe's most expensive cities and yet we wanted to follow our philosophy that all our events should be affordable to every Law student: as was the case with every other international conference organised by any ELSA group, accommodation and meals had to be provided to the participants at a subsidised rate (This was determined in the Spring ICM at La Coruna in 2002).

What we failed to discuss, or at least properly discuss, was the finances. For all our debates on rules, conditions and budgets no one ever felt the need to establish how exactly ELSA would pay for the moot court.

In 2002, when I was elected on the International Board as Vice President for Academic Activities, we were given strict instructions by the ELSA Network to organise the competition. What everyone had neglected to tell us until we were actually installed in Brussels was that although the budget had been decided, funds had not been allocated. The funds needed to be collected. I still remember the sinking feeling we had when,

in August 2002, we first looked at the financials for the event.

We never managed to raise all the funds that had been budgeted for; but what we lacked in funds we made up with enthusiasm and various cost cutting measures such as spending two months of Belgian winter without heating fuel or a week of daily commuting to Geneva from the French mountains hosted at a friend.

Looking back, sometimes I think that the event simply organised itself: Professor Emmert prepared the case, teams came forward to participate and academics to judge; and by spring 2003 we had a whole crowd in Geneva: 12 teams and their coaches, 20 organisers, and around 30 professors and experts.

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*“ I still remember the sinking feeling we had when, in August 2002, we first looked at the financials for the event.*

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The first edition of the EMC2 opened with the muted clink of wine glasses at the Hotel Beau Rivage, on the Geneva waterfront. This was a luxury that we could barely afford and the rest of the week was spent eating sandwiches and sponsored drinks on the WTO's lawn and in the hotel lobby along with all the participants. It was only then, sitting down by Lake Geneva and trying to prepare a final speech when I realised Geneva was beautiful.

My final point is that beyond our and ELSA's enthusiasm for the event, the first edition of the competition and its transformation into a global event was only possible thanks to patience (lots of it) and support from the WTO and many professors and academics who spread our enthusiasm to the faculties they taught. It is them that we owe our gratitude to.



# 14th Edition: To Sustainability and Beyond

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Ada Gawrysiak  
Vice President for  
Moot Court Competitions  
ELSA International 15/16

**The ELSA Moot Court Competition is the biggest, the most laborious and the most rewarding project that I have ever organized. It has been a journey of a thousand miles and a thousand hearts. I was so honoured and privileged to take on my shoulders the overall organization of the 14th edition of the Competition, pushing my personal boundaries every day, working on the project that reaches out to students from all around the**

**world and actually makes a difference. In one and a half month, I travelled across the whole world attending the Regional Rounds in – Singapore, South Africa, Canada, Czech Republic and Germany. On this path of my three-year involvement in the Competition, I met teams, coaches, Panellists, Academic Board Members, WTO staff and our Sponsors. People are the ones who create this Competition and are its biggest value. You can see the same people being involved in this project for several years, giving the Competition their whole heart.**

EMC2 gathered this year 225 students from 39 different countries representing 75 universities. Without any doubts, the best experience of the EMC2 is to see the evolvement of the participants from the first pleading of the Regional Rounds to the Grand Final pleading during the final stage in Geneva. After 14 years of its existence, it is not just a student-run Competition; EMC2 is now a platform that has created its own family, where people invest their personal time, energy and passion.

It is not about winning, but about competing. Whoever doubted the students participating in this Competition and ever told them that they dream too big, was thinking too small. Every year we see teams without academic background

or help reaching to the Final stage of the Competition because of their motivation and determination. I truly believe that this Competition change lives, helps people to develop and opens doors to a future career. Along the way, not only do they gain legal knowledge but also so many necessary skills which they can use - no matter which path they choose in their lives. This project will give back to the participants for all their hard work a valuable experience and skills.

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“ I truly believe that this Competition changes lives, helps people to develop and opens doors to a future career.

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Every year the Competition is growing, its academic quality is increasing and organizational developments are begin made. One of the biggest accomplishments of the 14th edition of the Competition was the establishment of the cooperation with the United Nations Economic Commission for Africa (UNECA) in regards to the African Regional Round. It is the first time in ELSA's history that a UN body financially supported our association. Thanks to the UNECA contribution all of the teams participating in the African Regional Round had their flights and accommodation covered. Without that support, it would be impossible for the African students to take part in the Competition, because of the financial barriers. This year, not only were we able to support the African teams but also teams in need that applied for the financial assistance for the Final Oral Round participation. Thanks to a specially established fund, where individual donors donate their personal money, seven teams that participated in the Finals had their costs partly covered. The long-term aim of the Competition is to make the

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participation of students more affordable, by lowering the fees and providing teams with financial assistance. The first step was taken as participation fees once again have been lowered; which would not be possible without our long-term supporters and sponsors. We are grateful to have on board law firms that believe in what we are doing. This year, we created a special sponsorship structure that helped us to treat our sponsors equally and to be more transparent towards their benefits.

For the first time, the Final Oral Round took place at the same time as BIICL Annual WTO Conference. Students and team coaches had the opportunity to expand their legal knowledge and attend all the conference panels. During the Tribute to John Jackson and Julio Lacarte Muro - ELSA Moot Court students were addressed by the Director General of the WTO – Roberto Azevedo. That fact highlighted that ELSA students are officially welcomed in a trade law family.

After 14 years, the ELSA Moot Court Competition Final Oral Round has become a week of celebration of the trade law community. During the Grand Final we saw a full house in the WTO famous room W. Full house of leading trade law experts that came to see students competing against each other at a level similar to what might be seen in an actual WTO dispute. They came, because they know that these students are the future.



# EMC2 Success Story: Interview with Santiago Wills

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**Santiago Wills is a former participant and winner of the EMC2. After acting as Counselor of Foreign Affairs of Colombia before Canada, and as Adviser to Colombia's International Trade Deputy Minister, he now manages the International Trade and Investment practice at renowned Law Firm - Lewin & Wills – and lectures at prestigious universities in Colombia and elsewhere.**

As most of our readers already know, the ELSA Moot Court Competition on WTO Law (EMC2) is perhaps the most important moot court in International Economic Law worldwide. With a trajectory of over 14 years, the EMC2 has proven to be an ideal space for participants to expand their professional career reach, and for Law Firms and academic institutions to choose some of the best students from many jurisdictions and different cultural backgrounds.

Former participants agree that the EMC2 has opened many doors to professional and academic opportunities, including internships, formal jobs, and scholarships for a variety of academic programs.

At ELSA we interviewed Mr. Santiago Wills, a former participant and winner of the EMC2, who has kept a strong link with the competition. He has been actively involved in the competition throughout the last nine years as a regional organizer, coach, and as a panelist. He is currently part of the EMC2 Academic Board.

*How would you describe the experience of participating in the EMC2?*

The opportunity to be part of such an interesting moot court, and deliver your arguments before experts in the substance of Law of your interest is an experience like no other in your professional training. The mooting experience in EMC2



develops skills that are usually not developed in traditional courses. Skills such as legal advocacy, legal research, teamwork, and persuasion are enhanced throughout your participation. In addition, the social and cultural interactions during the EMC2 are key in drawing the most benefit from the participation. The networking events not only are they fun but also useful.

*Did your participation in the EMC2 affect in any way your professional career?*

Absolutely. It did in a very positive way. On the one hand, it helped me create and expand my knowledge in the field of International Trade Law. It also showed me what the practice of Law looks like in this field, in particular in WTO Law litigation, and reaffirmed my interest in pursuing such a career. On the other hand, it provided many opportunities to in fact being able to follow this professional path. I received scholarship opportunities, internship and job offers in exceptional working places such as the WTO, various Law Firms and academic and research institutions. They all admitted that the offers were in part due to my participation in the EMC2. The way you approach and take advantage of



these opportunities will create the professional momentum in the direction you decide. This is what happened to me.

*You have been involved for almost ten years in this moot court. Why have you kept your closeness to the EMC2?*

As I explained earlier, a big part of my professional development is due to my participation in the EMC2 and the opportunities derived from it. I now feel it is my time to give back to the EMC2 my full support, and help provide to students around the world the opportunities I got. I am absolutely convinced that this moot court creates the adequate framework to boost the professional development of the students interested in pursuing a career in this field.

*Other than the substance of Law and the legal skills you develop in the EMC2, what would you say is important for students to take into account when participating in the moot court?*

Networking. During the regional rounds and the final oral round, participants will be in direct contact with litigators, professors and WTO Secretariat officers among others. In other words, they will be in direct contact with potential employers. Not only should students do their best efforts to impress such experts when pleading before them, but also to get to know them better during the networking events. Of course, following the corresponding anonymity rules and standards of decorum.

*Should students not necessarily interested in the field of International Trade Law participate in the EMC2?*

Yes. The skills you develop during the EMC2 are extensive to most areas of Law, even to your day-to-day life. The way you learn how to approach legal issues and tackle even the most difficult hurdles in problem solving will be useful even if you decide not to pursue a career in this field.

*You have been involved in every possible role in the EMC2: as a participant, as an organizer, as a coach and as a panelist. In your opinion, what is the most difficult role?*

Every role has its own difficulties. However, being a participant is usually the first approach of the EMC2, and thus the most nerve-defying role. The preparation needed in terms of research, argumentation, and advocacy takes you by surprise when starting. You even need to learn how to avoid a nervous breakdown before your pleadings. In other roles you already know from the beginning the amount of work coming at you, so it is not as stressful.

*Do you consider that the level of the EMC2 has improved throughout the years?*

Yes. Although there have always been excellent teams in all editions of the EMC2, the overall level of the competition has increased. I think that built knowledge and know-how



acquired throughout the years within the participating universities create the capacities for teams to better prepare. Also, the supervision of the Academic Board, the fundamental coordination of ELSA, and the quality of the case authors and panelists, have provided a better space for the EMC2 to evolve towards a more rigorous and demanding competition.

*What challenges do you think the EMC2 faces in the near future?*

As with any international moot court, one of the main challenges will be to increase worldwide participation in the competition while maintaining its high-quality level. In particular, it will be important for the EMC2 to retain more participants from developing countries, and keep expanding its jurisdictional reach. With the help of the WTO, big efforts have been put in place to gain more participation from African universities in the past years, and it has proven to be a successful approach.

*Finally, we have to say that you are a success story of the EMC2. You have had a successful career, with professional experience in the public and private sector, the WTO, and private organizations such as the International Chamber of Commerce. What can you tell us about life after the EMC2?*

The EMC2 gives you skills, networking opportunities, and a learning experience like no other. It will provide a chance to boost your career in this field, if you desire so. However, what you make of these opportunities will guide your professional path afterwards. I know many participants that took internship opportunities, scholarships, and even jobs in Law Firms after their EMC2 participation, and are now very successful professionals. But they could have rejected these offers. It is in one's decision to take as much as you can from this experience and translate it into real professional achievements. I believe that no goal is too high for EMC2 participants.



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“ The EMC2 gives you skills, networking opportunities, and a learning experience like no other.

- Santiago Wills



# The EMC2: Ensuring the Future of WTO Law

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**Mateo Ferrero**  
Dispute Settlement Lawyer  
Appellate Body Secretariat,  
World Trade Organization

**My involvement in the ELSA Moot Court Competition on WTO law (EMC2) goes back almost a decade. I participated in the 2007/2008 edition of the competition as a member of the Universidad de los Andes team from Bogota, Colombia, which, ultimately, emerged as the winner of the competition. Subsequently, after joining the Appellate Body Secretariat as a lawyer, I had the opportunity to serve as a panellist in**

**a regional round of the competition. Participating in the EMC2 has been an incredible experience in many respects. It provides a unique opportunity to immerse oneself in a complex and interesting area of international law. It is also an invaluable platform for meeting people from all over the world whose professional interests are similar to your own. Likewise, the EMC2 enables students to improve their oral advocacy skills to levels approaching those of professional litigators. Upon reflection, I have learned the following three fundamental lessons through EMC2.**

Teamwork is crucial for success. I had the good fortune and privilege of having great teammates - Juan Pablo Moya, Jose Torres, and Santiago Wills - and an exceptional coach, Miguel Villamizar. Together, we worked as a true team. We trusted each other. We were a diverse team. Each of us had different strengths and weaknesses. However, under the wise guidance of our coach, we sought to organize our work so as to accentuate the positive and eliminate the negative. This ensured that, as a group, we were able to deliver an output that was much higher than the mere sum of our individual contributions. The art of the coach is to get people to exceed their own capabilities and then to combine those capabilities to maximize the team's

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“ Although many goals in life seem distant and improbable, it is much better to aim to achieve those goals than it is to give up the struggle at the outset.

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output. Miguel certainly achieved that with the four of us.

Aim high. Although many goals in life seem distant and improbable, it is much better to aim to achieve those goals than it is to give up the struggle at the outset. The EMC2 gives students a seemingly insurmountable challenge, which provides the best motivation to learn and improve. It certainly worked for us. We were five people without any background whatsoever in international economic law. In fact, there was not even a course on WTO law at our university. Our university had never participated in the EMC2 when we decided to put together a team, and none of us had ever done a moot court in our mother tongue, Spanish, let alone in English. But we overcame our limitations by aiming beyond what we were capable of doing at the start of the adventure.

There is no substitute for hard work. Everybody wants to be good, but not many are they prepared to make the sacrifices that it takes to be great. Doing the EMC2 requires a lot of work. It is a long and arduous road full of challenges. The EMC2 cases are designed to address the tough, unresolved questions in WTO law. They are also structured in a way that both parties have strengths and weaknesses in their positions.



Therefore, building up the respective cases of the complainant and the respondent requires thorough research and plenty of creativity. Likewise, getting ready to defend your case before experts in WTO law demands serious practice as tough, unexpected questions will undoubtedly be asked. Facing the type of criticisms and questions that inevitably arise during an oral pleading taught me to develop a thick skin and not to take things personally. I learned during the EMC2 that, as with problems that arise every day in every job, perseverance, resilience and a positive mind-set are crucial for a successful outcome.

Finally, it would be remiss of me not to say a few words in praise of the instrumental role that ELSA has played in launching and organizing this competition over the past 15 years. This moot court has been possible thanks to the hard work and dedication of numerous generations of ELSA students. I believe that the EMC2 is one of the most successful stories

of capacity building in a highly technical area of international law. The number of former EMC2 participants that are now working on WTO law-related fields (as government officials, private practitioners, academics or international civil servants) increases exponentially each year. This is a clear testimony of the positive impact that the EMC2 has had on the field of international economic law and on the professional paths of many students. Bravo ELSA and here's to many more successful editions of the EMC2!

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I thank the organizers of this year's ELSA Moot Court Competition on WTO law for kindly inviting me to write this article for the publication celebrating the 15th edition of this competition. I also thank Chibole Wakoli and Claude Chase for their helpful comments on this article.

# Market Economy Status for China after 2016: The Options on the Table of the European Commission

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Philippe De Baere  
Partner  
Van Bael & Bellis

**The treatment to be accorded to imports from China in the context of anti-dumping investigations after the 11th of December 2016 is currently one of the most hotly debated topics. As of that date, Section 15(a)(ii) of China's Accession Protocol to the World Trade Organization (WTO) will no longer justify the use of the so-called "analogue country" methodology for the calculation of the normal value. Until now, this**

**methodology has allowed WTO Members to disregard domestic prices and costs in the calculation of the normal value for products originating from China, and to use the domestic prices of like goods in a comparable third country. This so-called analogue country methodology frequently leads to significantly higher normal values and anti-dumping duties.**

As the date provided under China's Accession Protocol approaches, the European Union (EU) is under pressure to act. Article 2.7(b) of the Basic Anti-Dumping Regulation of the European Union explicitly lists China as a "non-market economy country" for the purpose of calculating the normal value in anti-dumping investigations. For this reason, the European Commission, which is the body normally tasked with the initiation of the legislative process in the EU, is currently considering three options.

The first option consists of leaving the European Basic Anti-Dumping Regulation unchanged. China will almost certainly challenge the Regulation through the WTO dispute settlement system and will have a strong case, because the text of the relevant transitional provision in China's Accession Protocol is clear with regard to its automatic expiry. The EU

may gain some time until all the relevant steps of the WTO dispute settlement system are completed but eventually it will be forced to withdraw the measure in order not to be subject to countermeasures.

The second option on the Commission's table is the removal of China from the list of non-market economy countries provided by the EU Basic Anti-Dumping Regulation. Pursuant to it, EU authorities will not be able to disregard the prices for the investigated goods in China in the context of anti-dumping investigations, and will have to rely on Chinese domestic prices.

The third option combines the removal of China from the list of non-market economies in the Basic Anti-Dumping Regulation together with the introduction of a range of "mitigating tools".

First among the proposed mitigating tools is the making of "cost-adjustments". It allows the investigating authority to upwardly adjust production costs when the prices of the inputs are not reasonably reflected in the accounts of the investigated producer or exporter. Recently, the WTO Panel in *EU - Biodiesel* found the adjustment of the domestic prices of soya and soya beans in line with international prices made by the Commission in the context of anti-dumping investigations on biodiesel from Argentina to be inconsistent with the Anti-Dumping Agreement. In the view of the panel, the presence of a distortion in the market for raw materials cannot justify a departure from the records of investigated producers as the basis for the determination of the costs of production in the construction of the normal value. The panel also made clear that even in the limited circumstance in which the records of the producers can be disregarded, the costs of production established by the investigating authority must reflect the conditions prevailing in the country of origin. Based on this





precedent, it is unlikely that cost-adjustments based on out-of-country benchmarks could pass the scrutiny of WTO Panels and the Appellate Body.

The second proposed mitigating tool is the abolition of the so-called “lesser duty rule”. Pursuant to this rule, the European Commission currently applies anti-dumping duties only insofar as they are able to offset the injurious effects of dumping. If a lower duty compared to the margin of dumping is sufficient to restore fair conditions for trade, the European Union prefers not to impose an excessive burden on dumped products. The abolition of the lesser duty rule will not necessarily be a welcome development. Over the years, the European Commission has tried to strike a balance between the protection of the domestic industry suffering injury from dumped imports and the conflicting interest of importers of foreign goods who ultimately pay the price of anti-dumping duties. The abolition of the lesser duty rule will not expose the European Union to any violation of the Anti-Dumping Agreement. The latter, in fact, only requires that anti-dumping duties do not exceed the dumping margin. However, it must be noted that the proposed tool will mostly affect importers of foreign goods, who will be forced to incur higher costs for consumption goods or for the purchase of intermediate goods that are used for the production of other goods.

Another proposed tool is “grandfathering”. It involves the amendment of existing provisions in order to safeguard the definitive anti-dumping measures already in place against imports from China, at the time at which the reforms will enter into force. Under this approach, requests for interim reviews for measures concerning China will not be allowed until the initiation of expiry reviews. This approach is, on its face, inconsistent with the Anti-Dumping Agreement, as it would deny the possibility for producers or exporters to seek an interim review based on a change in circumstances.

The fourth suggested mitigating tool requires amendments to the anti-subsidy legislation in order to allow the European Commission to expand the scope of an investigation launched on a particular set of financial contributions to new subsidies discovered in the course of the investigation. It is doubtful that it will be found to be consistent with the Agreement on Subsidies and Countervailing Measures.

Taking account of all outlined options, it is only the second (the removal of China from the list of non-market economies in the EU Basic Anti-Dumping Regulation) that is clearly in compliance with WTO law and would avoid the risk of claims of “as such” violations of the Anti-Dumping Agreement. In absence of specific derogations, the general rules of the Anti-Dumping Agreement have to be applied, irrespective of any political consideration with regard to the state of the economy in China and the will of the European institutions to protect domestic producers from cheaper imports from other countries. At a time when the EU is urging its trade partners to fully comply with their WTO obligations, it would be a severe blow to the EU’s credibility if it were to be perceived as ignoring its own obligations where this is politically expedient.



## The idea was born

Discussion about an international moot court competition by ELSA was initiated

1991



## 1st Edition

- Pre-Written Rounds
- 5 National Rounds
- FOR Geneva, Switzerland (12 teams)

2002

## ICM 2001

- International trade law chosen as the subject of the moot court
- EMC2 rules approved by the Council of ELSA

## 2nd Edition

- 5 National Rounds
- First Regional Round
- First Regional Round Africa
- FOR Geneva, Switzerland (12 teams)

## 10th Edition

- International Written Round
- 4 Regional Rounds
- First merged Regional Round All-American
- FOR Montpellier, France (16 teams)

2010

## 8th Edition

- International Written Round
- 1 National Round
- 5 Regional Rounds
- FOR Santo Domingo, D.R. (17 teams)

## 9th Edition

- 1 National Round
- 5 Regional Rounds
- FOR Evian, France and Geneva, Switzerland (16 teams)

2012



## VP MCC

Creation of a new position in the board of ELSA - the Vice President for Moot Court Competitions



## 12th Edition

- International Written Round
- 5 Regional Rounds
- First Regional Round Africa
- FOR Geneva, Switzerland (20 teams)

2013

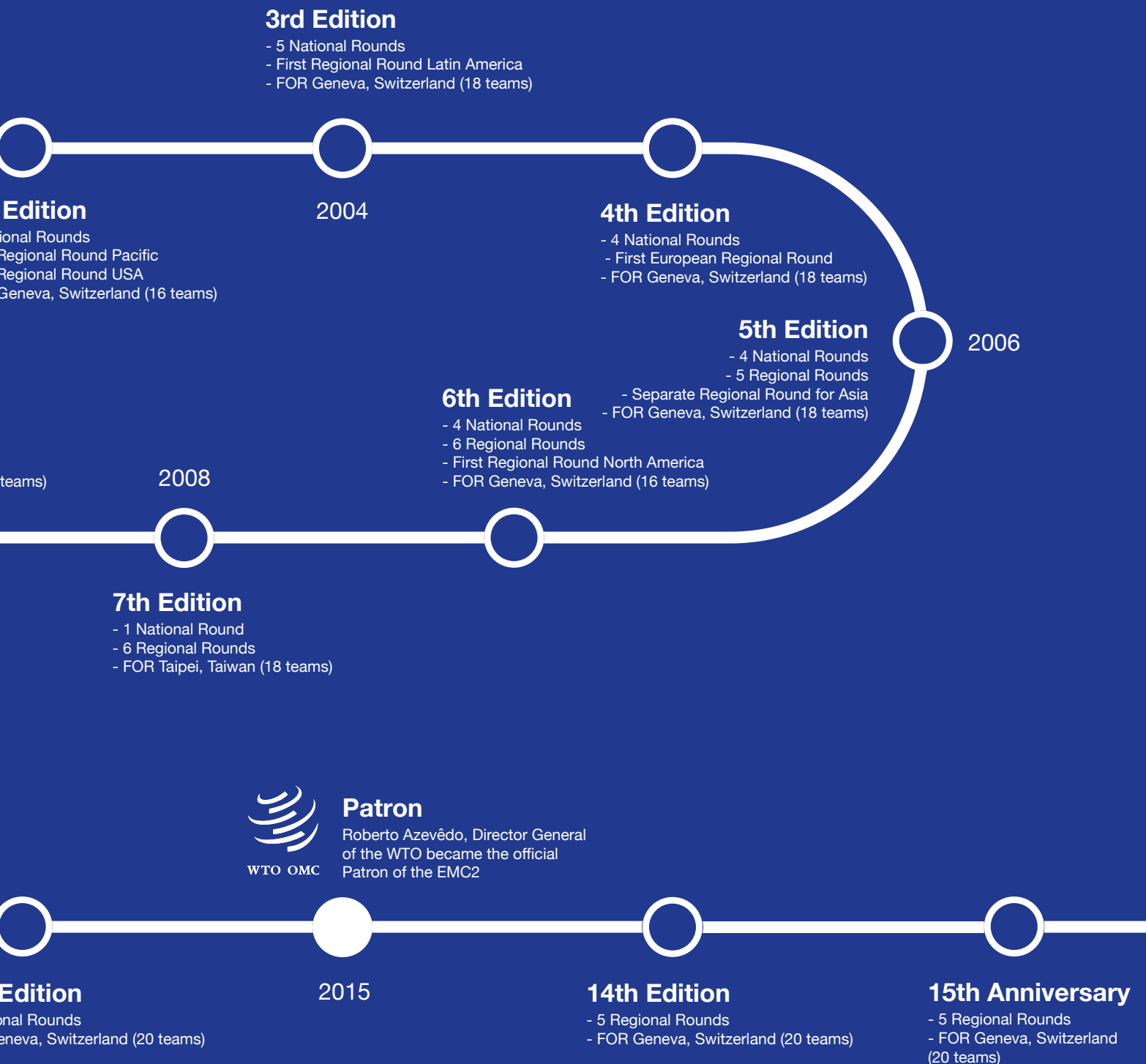
## 11th Edition

- International Written Round
- 1 National Round
- 4 Regional Rounds
- FOR Geneva, Switzerland (20 teams)

## 13th Edition

- 5 Regional Rounds
- FOR Geneva, Switzerland (20 teams)

# 15 Years of ELSA Moot Court Competition





# Sidley Austin LLP Supports ELSA and Discusses Challenges Facing the Dispute Settlement System in 2016

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**Jan Yves N. Remy**  
International Lawyer,  
Sidley Austin

**Sidley Austin is proud to be a Gold Sponsor of this year's ELSA Moot Court Competition.**

Our sponsorship continues a tradition of supporting ELSA through, for instance, hosting the Opening Ceremony of the Final Round in Geneva; judging the Regional and Final Rounds; and hosting students participating in the Final Round at our Geneva Office.

As an active participant in the WTO's dispute settlement system, Sidley feels a keen responsibility to contribute to the success and viability of that system. The ELSA Moot Court Competition provides one vehicle through which we can contribute, by investing our resources in harnessing the young legal talent that will be the next generation of international trade lawyers. ELSA gave many of us at Sidley a first glimpse into the exciting world of international trade law, and we want to give back.

The Competition provides an excellent platform for students across the globe to create important networks that will endure past the competition, and into their professional lives; it provides visibility for legal talent from which the WTO

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*“ ELSA gave many of us at Sidley a first glimpse into the exciting world of international trade law, and we want to give back.”*

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Secretariat and law firms can identify future interns and/or law associates; it offers the trade community a forum to meet and discuss some of the intractable legal conundrums at the forefront of academic debate; it allows the seasoned practitioner or Appellate Body Member to offer a law student a new way of thinking about a legal problem or provide a kind word of encouragement that will set him/her on his professional course. At its core, ELSA permits engagement in a common enterprise of finding solutions to problems through a process of legal reasoning that itself demands perseverance, dedication and discipline. The ELSA Moot Court Competition offers a unique and life changing experience of which Sidley wants to be part. In many ways, the Competition offers the best platform on which to execute the Sidley International Trade Practice motto: “Talent. Teamwork. Results”: the competition attracts the best talent from far-flung corners of the globe and reminds us that working together through effective teamwork allows diverse talents be combined to yield tangible results.

**As a dedicated member of the WTO legal community, Sidley also wants to be part of the solution to the challenges confronting the dispute settlement system.**

In February this year, Sidley Austin's Geneva Office brought together a panel of five leading WTO law academics and practitioners to talk freely about the challenges that the WTO dispute settlement system faces. 2015 witnessed a number of unprecedented challenges, including: a large number of factually intense and complex disputes that continue to test the limits of the system's capacity; limited outcomes of the recent Nairobi Ministerial Conference, which highlight the challenges faced by the WTO's negotiating branch; and the conclusion of the Trans-Pacific Partnership Agreement (TPP) and progress on other “mega-regionals”, which some suggest offer viable alternative dispute settlement mechanisms to the WTO's.



Sidley's esteemed panel for the session entitled: "WTO Dispute Settlement in 2016: Blue Skies or Storm Clouds Ahead?" comprised: James Flett (EU Commission, Legal Service); Professor Gabrielle Marceau (Professor, UNIGE and Counselor, WTO Legal Affairs Division); Koji Saito (Director, Dispute Settlement Division, Japan's Ministry of Foreign Affairs); Iain Sandford (Partner, Sidley) and David Unterhalter (Former Appellate Body Member). Jan Yves Remy (Sidley) moderated the session. The session was organized by Jan Yves Remy and Christian Lau of the Sidley's Geneva Office.

Professor Gabrielle Marceau started the discussion with an introduction to the topic of the interaction between regional trade agreements (RTAs) and the WTO. The panel debated whether RTA dispute settlement mechanisms will replace those of the WTO. The discussions played a useful role in providing new ideas that could one day be incorporated into the WTO dispute settlement framework. The recent Appellate Body decision in *Peru – Agricultural Products* confirmed that the Appellate Body is clearly not in favour of allowing RTA provisions to displace or exclude the role of the WTO dispute settlement system in applying the disciplines of the WTO covered agreements.

The panel addressed the interesting question of whether the WTO could be used as a forum to resolve disputes under RTAs. The WTO's institutional experience and capacity means that it could, in principle, provide a useful framework for resolving issues arising beyond the WTO covered agreements. The possibility of connecting WTO dispute settlement and the proposed Trade in Services Agreement (TISA) was raised. So too was the possibility that special terms of reference for WTO panels, or a WTO arbitration, could address WTO-plus issues relating to RTAs, even without any formal change to the WTO Agreement.

Koji Saito introduced a discussion of the institutional balance between the WTO's dispute settlement system and the "political" organs through which Members make new rules and administer existing ones. The group discussed the slow progress of multilateral negotiations and the pressures placed on dispute settlement. It was suggested that the system itself could handle this perceived "disequilibrium," and that it had not appeared to trigger judicial activism thus far. There is a possibility, however, that there may be a need to move away from the consensus principle in the future. The experience within the European Union's political system could well serve

as an example of how this could evolve.

A question was raised about the role of WTO committees in refining and developing new rules and principles to address trade issues. Do the Appellate Body's decisions in *U.S. – Clove Cigarettes* and *U.S. – Tuna II (Mexico)*, which relied on WTO Committee Decisions as “subsequent agreements” relevant to the interpretation of treaty provisions, provide an approach that allows panels and the Appellate Body to take account of Members' decisions other than formal Ministerial Conference decisions? Several panelists emphasized that Committee Decisions are decisions by Members, which as such should be respected. Indeed there is a question of whether the concept of “negotiation rounds” is outdated; instead, the WTO should be understood as a permanent forum for ongoing negotiations through its committees.

Turning to the problems besetting the dispute settlement system itself, David Unterhalter led a discussion focused on possible procedural innovations. He noted that the current system lacks many of the procedural innovations seen in domestic systems and also lacks rules customized to the different types of proceedings. The panel agreed that it is possible to introduce at least some procedural innovations, even in the absence of formal reform. In order to increase the efficiency of proceedings, it is important, for instance, to clearly distinguish which facts are in dispute. Panels should be encouraged to identify factual findings more clearly, and parties should work harder to identify agreed facts. It was suggested that provisions relating to “good offices” could be used to facilitate the identification of agreed facts, thereby relieving the panel — and the system generally — of unnecessary complexity and delay.

Another area in need of reform relates to the use of expert evidence in WTO dispute settlement. In David Unterhalter's view, mechanisms could be developed to ensure that experts from both parties work together to narrow down their different assessments to the points of real contestation. Others commented that experience so far with “expert testimony” at the panel stage revealed that it may be effective, but its utility in the WTO context was limited in the absence of a process for cross-examination. It was suggested that one option for reform may be the adoption of working procedures mandating that evidence not be accepted unless experts are available for questioning during the substantive meetings of the panel with the parties. One panelist emphasized the tension regarding the WTO standard of review, whereby, on the one hand, panels are cautioned not to re-assess the facts, including the level of risk (for instance in SPS cases), and, on the other hand, panels

are assisted by experts to better assess such risks.

James Flett then led the panel in a discussion of the use of economic evidence in WTO disputes. While acknowledging that economic analysis and expert evidence usually contribute to WTO dispute settlement, the costs to the system and the parties need to be considered. For example, in the context of a “retaliation” arbitration involving the quantification of the level of nullification and impairment, it is questionable whether the degree of economic analysis being undertaken is warranted. Panelists agreed that in some cases economic analysis may not be of much help, but noted that there were some concepts under the covered agreements that, to be properly interpreted, required the help of economists and economic evidence. As a practical matter, there is some inevitability to the “arms race” of providing economic evidence as litigants become more and more sophisticated in their use of economic arguments to buttress their cases. In the current environment, it is important that adjudicators have access to economic expertise to decide the evidence being presented to them.

In closing, Iain Sandford highlighted several points relevant to the manner in which state-owned enterprises (SOEs) have become an increasingly prominent feature in dispute settlement in the last 20 years. He argued that, in recent years, Members have increasingly used trade remedy measures to address alleged distortions caused by SOEs, for instance, through use of normal value cost adjustments in dumping cases or when identifying subsidies. Discussion among the panelists highlighted that new trade agreements, notably the TPP, adopted specific, WTO-plus rules for SOEs. There was some debate about whether specific rules for SOEs were necessary or appropriate. It was notable, nevertheless, that disputes arising from WTO-plus SOE rules in TPP would inevitably be litigated under the TPP dispute settlement framework. The panel highlighted that issues pertaining to SOEs are not limited to emerging economies, but also impact other WTO Members, which is especially important to consider in the regulation of energy markets.

Jan Yves Remy wrapped up the discussion by returning to the theme of the session: blue skies or storm clouds ahead? The discussion showed that both sunscreen and umbrellas are required as Members continue to deal with new challenges from both outside and within the existing WTO dispute settlement system.

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<sup>1</sup> The summary below is taken from a piece authored by Sidley.



“ Being a foreign student from a developing country, I could only dream of having a scholarship abroad in a field that I am keenly interested in. EMC2 translated my dream into reality.

- Vida Soraya S. Verzosa  
*Team Captain, 8th Edition*



# How the ELSA Effect Benefits the WTI

By Morven McLean, Web Editor & Corporate Publisher, WTI

**The WTI's successful involvement with the ELSA Moot Court Competition began in 2009. Thanks to WTI sponsorship, winners of the regional round receive two weeks' free tuition either on the Institute's Summer Academy or on its MILE Master's programme. The winners of the final round in Geneva receive five weeks, which they can use either to attend part of the MILE or the full Summer Academy.**

The collaboration has been proved very beneficial for several reasons. Firstly, it is an excellent way to raise awareness of our Master's programme, doctoral programme and Summer Academy - and to attract top students. We find the personal approach very effective: our alumni or senior researchers often act as moot court panellists and give a presentation on behalf of the WTI. They are also able to answer any questions that may arise about studying at the WTI. In addition, we make sure to leave a supply of publicity materials for those considering further studies.

Involving our alumni as panellists is a great way for us to keep in touch with them and at the same time it gives them the opportunity to use and develop their skills.

Lastly, we find that offering competition winners the chance to attend our weekly courses, or to take part in the Summer Academy, frequently results in these talented young lawyers returning to the WTI.

Between 2011 and 2016 nine students joined the MILE who had previously taken part in an ELSA moot court. One of those is Iryna Polovets, a graduate of MILE 12.

Iryna describes her EMC2 experience while studying for her Master's in Ukraine as "a truly life-changing experience, which shaped my decision to pursue a career in international



*Tetyana Payosova, Panellist*

trade law. Thanks to the moot court, I got to know about the MILE programme and met some of the WTI's researchers and professors who encouraged me to apply. By coincidence, I received the news about my admission the following year during the final round of the EMC2, in which I participated as a coach," says Iryna.

"I am happy that, by continuously sponsoring the EMC2, the WTI supports young talent all over the world," adds the WTO dispute settlement lawyer.

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One of the current MILE intakes, Iulianna Romanchyshyna, participated in the moot court in 2013, where her team won the first place at the National Round in Lviv (Ukraine), the third place at the Regional Round in Porto (Portugal) and advanced to the Final Oral Round in Geneva. She also went on to serve as a coach.

Iulianna refers to her ELSA experience as ‘invaluable’ for both her personal growth and future career. She believes her participation was a decisive factor in her later being offered a job with Ernst & Young Ukraine.

WTI panellists are also very positive about the moot court experience.

“Being a panellist is the occasion for me as a researcher and lecturer to engage with practitioners. That’s inspiring and always leads to great discussions in the evenings and breaks,” says WTI post-doctoral research fellow Charlotte Sieber-Gasser.

“It’s enriching for both sides; the right set of questions may broaden the understanding of a legal problem enormously, while the innovative ways some students approach trade law may help panellists to step out of their box and find some unexpected inspiration.”

WTI PhD candidate and lecturer at the Institute of European and International Economic Law Tetyana Payosova echoes this sentiment.

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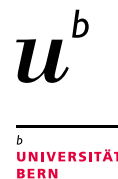
“ *Participation in EMC2 over a number of years both as a coach and as a panellist has been one of the most rewarding experiences in my academic carrier.* ”

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“Participation in EMC2 over a number of years both as a coach and as a panellist has been one of the most rewarding experiences in my academic carrier,” she says.

“As a coach, I was always impressed by the enthusiasm of the students and their progress during the competition and pleased to see that this moot court served as inspiration and impetus for their successful career development.”

The WTI congratulates ELSA on its 15th anniversary and looks forward to many more years working together.



Be a MILE ahead!

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# The EMC2 from (Almost) All Angles



**Nicolas Lamp**  
Assistant Professor  
Faculty of Law,  
Queen's University

**The ELSA Moot Court Competition on WTO Law is many things to many people. To students, it provides a gateway to the world of international trade law and a challenging opportunity to develop their legal advocacy skills. To coaches, it is a chance to get students excited about the WTO and to delve deeply into ever new areas of WTO law. For law firms, it is the ideal recruiting circuit; for the WTO, the best capacity building tool yet invented. And for the international trade law community at large, it is a source of hope and confidence that the WTO, for all its travails, is still able to inspire passion, and that, every year, a new generation of eager and capable trade lawyers is coming of age.**

*I have been privileged to experience the EMC2 from a number of different perspectives. As a student, I competed*

*for the London School of Economics and coached the LSE's team the following year. As a WTO staff member, I witnessed the tremendous investment that the organization wisely makes—in terms of staff time and effort—in the competition every year. As a case author and panelist, I had the immense privilege of witnessing some of the trade world's best legal minds brought to bear on some of the unresolved legal issues that were troubling me at the time (and that I had therefore built into the case). And as an organizer of the All-American Regional Round in March this year, I was grateful for the opportunity to bring a terrific group of WTO lawyers and talented students from across the Western Hemisphere to Queen's University in Kingston, Canada.*

*I believe that there are three forces that drive this juggernaut of a moot court competition and have allowed it to become a crucial, and sometimes life-changing experience, for so many who are involved in it. The first force is the dedication of the students who participate in the competition. Without the willingness of ever new generations of students to devote a*



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“ *The rewards far outstrip the sacrifices.* ”

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almost inhuman amount of time and effort—far more than they would be willing to expend for any normal university course—to the moot every year, the competition would simply not be what it is. Importantly, this dedication engenders a second set of forces—the immense respect that the lawyers, academics and judges who serve as panelists have for the students participating in the moot, and the joy that these individuals derive from seeing the students plead. Without this respect and joy, it would be hard to explain why so many highly distinguished people take time out of their busy schedules year after year to serve as panelists in the competition. The high quality of the panelists, in turn, is an intense motivation and inspiration for the students, who feel that their arguments are understood and their legal skills appreciated. Finally, a third force is the intense sense of responsibility that is experienced by anyone involved in organizing the competition, starting with ELSA’s Vice-President for Moot Court competitions who holds all the threads in her (or his) hands, to the organizers of the Regional Rounds, to the case author, whose creation ultimately determines whether the competition ‘works’.

The ELSA Vice-Presidents with whom I worked closely—Tanja Sheikhi and Ada Gawrysiak—were both incredibly dedicated, hard-working, and professional, and admirably managed the difficult task of coaxing a large number of people with little time and strong opinions into working together to make their respective editions of the competition a success. When it comes to organizing a Regional Round and being the case author, I can only speak about the weight of responsibility that I experienced myself—in the moment when I realized that dozens of students had dedicated no less than nine months of their lives to studying my case; when students told me that they had been dreaming about the case; and when I saw the disappointed look on their faces when I had to tell them that a fact of the case about whose hidden significance they had been speculating for months had been a random choice of

mine with no sophisticated theory behind it. As organizer of the Regional Round, one bears a similar responsibility, namely, to make what for the majority of teams will be the culmination of many months of hard work an experience that is appropriate to the occasion, by allowing them to showcase their work in front of highly qualified panelists and at the same time providing plenty of opportunities for networking and celebration.

I feel truly privileged for having been part of the EMC2 at various points in my career, and I can only recommend the experience, including that of organizing a regional round or writing the case, to anyone who is considering it. The rewards far outstrip the sacrifices.



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# Sharing the Good Experiences from Hosting the 2009 Final Oral Round of EMC2

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**Chang-fa Lo**  
Justice  
Constitutional Court  
Taiwan, ROC

**Let me congratulate the 15th ELSA WTO Moot Court Competition anniversary publication. I am very pleased to join the celebration of ELSA's achievement in this field.**

When I was still the director of Asian Center for WTO and International Health Law and Policy, NTU College of Law, we had the opportunity to work with the ELSA team to co-host the 2009 Final Oral Round (FOR).

The FOR was held in Taipei in May 2009. It was the first time the FOR was held in a city other than Geneva. The overall experience was excellent to us, and I trust that the participants felt the same way.

In that event, we were able to bring more than 20 panelists with great WTO experience and expertise to help judge the competition. They were from different parts of the world, including the North and South America, Europe and Asia. The support from the team members of the ELSA International and Professor Letizia Raschella-Sergi was strong. We also had technical support from the WTO Secretariat. The quality of the competition was high. I saw the participating teams and their coaches still preparing hard even during the competition period. The case author of that year was Professor Bradley Condon, who also came to Taipei to judge the competition. Their participation was the key to success of the 2009 edition of the competition.

After the competition, an academic conference on “the future of the WTO” was held including many panelists as speakers. We encouraged both the members and coaches of the participating teams to join the conference. It turned out to be very fruitful and useful. Not merely did the panelists come to judge the competition, but also to have academic exchanges

at the conference. Also, the participating students were able to join the discussions by asking very interesting and sometimes challenging questions. Both judges and students had these dual benefits.

I mentioned in my remarks at the Awards Dinner that the event was not merely a competition. It was a very important part of legal education and also an important opportunity for young and talented law students to make friends and to network among themselves and the judges. I am happy that the ELSA Moot Court Competition continues in such spirit throughout its fascinating history.





# The 13th Edition of the EMC2 – A Year to Remember

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**Tanja Sheikhi**  
Vice President for  
Moot Court Competitions  
ELSA International 14/15

**I had the pleasure to be part of ELSA International Board 2014/15. I was elected for the position of Vice President for Moot Court Competitions after the first African Regional Round of the EMC2 was established. African law students were now part of the EMC2 family, and had the chance to meet other law students from various parts of the world. The EMC2 had reached a level I never thought could be**

**maintained. However, I was wrong. Together with my fellow board members from the term of 2014/2015, we were able to keep up the quality and global character of the competition by organising the second Regional Round in Africa. The Regional Rounds of the 13th edition of the EMC2 were held in: Manila, Johannesburg, Washington, Halle and Bucharest. It was an honour to take part in the planning of the events and to witness the final results. I saw the competition with my own eyes and I was truly amazed by all the participants and their commitment and dedication.**



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“ *The EMC2 is more than a competition, it is a family.* ”

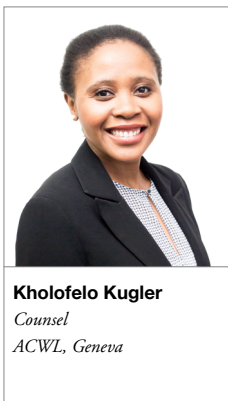
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The biggest challenges during my term were to both maintain the financial support from previous sponsors and to develop a strong sponsorship structure. We were deeply grateful to receive a financial support directly from the WTO for the second time. This contribution made it possible to organise the Regional Round in Johannesburg and send the finalists from the African round to the Final Oral Round in Geneva. Without the continued support from the WTO and its staff members, especially Professor Gabrielle Marceau and Ms. Marisa Goldstein, the competition would have never reached the prestige that it is currently holding.

A personal favourite among the numerous successful developments of the 13th edition, was the creation of a separate fund supporting teams to participate in the competition. Due to high costs, many universities struggle to send teams to international moot court competitions. This aspect is always an important element when organizing the competition. It was unfortunately not possible to decrease the fees for the 13th edition, nevertheless, a first step was taken in the process of creating a tool where teams could apply for financial aid. This shows that the EMC2 is more than just a competition. The EMC2 contributes to the legal education of today's law students; it deepens their understanding of the WTO dispute settlement and the importance of the organisation. It brings students from all over the world to various places where they have the opportunity to share experiences and learn from each other. The EMC2 is more than a competition, it is a family. And it is amazing to witness how this family keeps growing every year and I am truly honoured to be a part of it.

# Charity Begins at Home: Experiences at the 2016 African Regional Round of the ELSA WTO Moot Court Competition

*"What lies behind us and what lies before us are tiny matters compared to what lies within us."*  
- Ralph Waldo Emerson



***I had the distinct pleasure to participate as a judge at the third instalment of the African Regional Round of the ELSA WTO Moot Court Competition, which was held at Rhodes University, Grahamstown, in my native South Africa from 30 March – 1 April 2016. This particular Round holds a special place in my heart because it encompasses my three passions. First, it is held on my own continent, Africa. Second, it seeks to develop and expose African students to, third, WTO law. Below are listed some of the fond memories, lessons learnt, and food for thought that I took away from participating in this year's competition.***

My involvement with the competition began when I applied to be a judge at the African Regional Round. As an ex-debater and mooter, I looked forward to experiencing the excitement, passion, energy, and team spirit that accompanies such competitions, without the stress of being team members. I was quite pleased when I got accepted by ELSA to judge the Round and am grateful to my organisation, the Advisory Centre on WTO Law (ACWL), for covering the full cost of my travel and stay (and that of my colleague, Petina Gappah) in Grahamstown, and providing three prizes for the competition — including the Round's first Team Spirit Award.

The competition showcased talented students from 10 African universities from Ethiopia, Kenya, South Africa, Tanzania, and Uganda, some of which included other nationalities within the teams. I had the privilege to engage with students of all backgrounds who all had one thing in common – passion. What deeply struck me was that there were some teams that had no access to adequate research material. Some did not



even have reliable internet access. Notwithstanding those obstacles, all the teams rose to the occasion and came into each round with heightened determination, focus, and that certain African *je ne sais quoi* that some people call "swag". I truly hope that some of the students have been inspired to embark upon careers in international trade relations. I, for one, would be truly honoured to rub shoulders, again, with talents like them in this field. There is definitely space and a need for talented young Africans to shape the continent's trade agenda.

The competition was also a very personal experience to me. One of the teams represented at the competition came from my own alma mater, the University of Witwatersrand (Wits), where I obtained my LL.B degree just five years ago. Although, admittedly, my own law school is far better resourced than those of some teams at the competition, I understand their backgrounds and am familiar with some of the unique circumstances in which they sometimes find themselves. I saw my younger self in those students – doggedly determined and prepared to put in the heavy lifting that is required to succeed. One of the most touching experiences for me was the closing ceremony where, in the spirit of the African oral tradition, I shared my own journey to the world of international trade law. Some students were visibly touched by the financial hardships and personal trials that I endured. My sincere hope is that they could find some inspiration from my own humble story

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because they truly inspired me to continue to reach higher. I would like to address a million thanks to ELSA and the Round organisers for having the chutzpah to put together the African Regional Round for the third time. This particular round is different from the others because it has not yet become financially self-sustaining; therefore, a lot is done by ELSA and the members of the organising teams to fundraise thousands of US dollars to enable students from across the continent to participate in this prestigious moot court competition. I hope that there is continued support for this Round because it has directly and indirectly impacted the lives of many young people, including my own. A special word of thanks goes to Ada Gawrysiak, ELSA's Vice President for Moot Court Competitions; Vicky Heideman, Lecturer at the Law Faculty of Rhodes University; and Chibole Wakoli, Dispute Settlement Lawyer at the WTO's Appellate Body, for their tireless efforts and the excellent organisation of the event. Their professionalism, hospitality, friendliness, and perpetual optimism is admirable, particularly given the hurdles that they had to jump in getting this instalment of the competition off the ground.

Finally and most importantly, the thing that has been branded on my mind is the need for African institutions at all levels to invest in our own future. I know for a fact that being involved in this type of competition is one of the best form of capacity building for future trade officials. It is no secret that Africa needs competent and dedicated individuals to advance and protect its trade interests. I could imagine some of the students

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“ I know for a fact that being involved in this type of competition is one of the best form of capacity building for future trade officials.”

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that I saw at the competition being senior trade officials in the future but like many across the continent, they lack access to opportunities and financial and institutional support from the very societies that need their talents. I, therefore, challenge African universities, businesses, and public structures to put their money where their mouths are and to incubate and nurture this talent for our own collective good. I find the following proverb adequate to borrow from the Swedish: "the best place to find a helping hand is at the end of your own arm".



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# Building Legal Capacity in Africa Through the Younger Generation



**Since 2014, the International Centre for Trade and Sustainable Development<sup>1</sup>(ICTSD) has been providing institutional support, as a sponsor, to the African Round of ELSA Moot Court Competition on WTO Law (EMC2). ICTSD believes that supporting the students' participation in EMC2 is a long-term investment in African countries' legal capacity development, with a view towards a deeper and more active engagement**

**in multilateral trade. Such sponsorships will ultimately help to achieve the sustainable development goals of broad and sufficient participation of developing countries, especially Africa countries, in institutions of global governance.**

ICTSD sends experts on WTO law from the region to serve as panellists during the competition, supports the continued participation of African universities in the competition, and offers traineeship opportunities to the best orator of the Africa round of the moot court.

## **Other legal capacity building activities**

The involvement in EMC2 is part of ICTSD's broader strategy to provide professionals with technical tools that would assist them in further developing their knowledge and practical skills in the field of trade law.

ICTSD for example produces several publications dealing with trade law. Among them are *Bridges Weekly*<sup>2</sup> and *Bridges Africa*<sup>3</sup>. *Bridges Weekly* covers developments in WTO disputes, and more recently, in investor-state arbitrations.





*Bridges Weekly is a trusted source of timely and relevant information providing stakeholders with accurate plain-language narratives of what is happening in the otherwise complex field of trade law. Bridges Africa is a monthly review focused on multilateral developments and regional dynamics at play in policy-making in the African region, in the context of trade and sustainable development.*

*ICTSD also organizes a series of expert panel discussions on WTO jurisprudence<sup>4</sup> as well as other legal capacity building events. These are geared towards identifying and developing best-practices in developing countries in WTO dispute settlement and other highly specialized areas.*

*These activities also draw on ICTSD's cross-cutting research and solution-oriented discussions such as the E15Initiative. Along with the World Economic Forum and 16 other knowledge partners, ICTSD launched the Initiative in 2011 and has thus far, organized over 80 interactive dialogues, bringing together more than 375 leading international experts. The process has kick-started a fresh strategic look at key challenges and opportunities in the global trade and investment system and has focused on improving its efficacy, fairness, and inclusiveness as well as its ability to promote sustainable development.*

## **Conclusion**

*With these tools ICTSD hopes to encourage young talents in Africa to become more involved in international trade law, and play increasingly more prominent roles in trade policy-making, and ultimately build up legal capacity in the African region.*

## **Our Mission**

Founded in 1996, the International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation based in Geneva, Switzerland. The goal of the organisation is to advance sustainable development through trade-related policymaking.

Trade-related policy frameworks can serve as powerful drivers of sustainable development in global policymaking and global inclusion if those engaged in negotiations incorporate emerging knowledge on economic, environmental, and social issues. In doing so, they are empowered to better understand their own interests, build bridges to others, and advance mutually acceptable solutions.

ICTSD's vision is a sustainable world, supported by national, regional, and international trade policy and frameworks that support inter-generational equity.

<sup>1</sup> ICTSD website: <http://www.ictsd.org/>. ICTSD is an independent non-profit organisation based in Geneva, Switzerland. ICTSD's goal is to advance sustainable development through trade-related policy making.

<sup>2</sup> Bridges Weekly, available here: <http://www.ictsd.org/bridges-news/bridges/overview>

<sup>3</sup> Bridges Africa, available here: <http://www.ictsd.org/bridges-news/bridges-africa/overview>

<sup>4</sup> For instance, Talking Disputes events, available here: <http://www.ictsd.org/events-overview>

<sup>5</sup> E15 website: <http://e15initiative.org>

# Trade Law and its Future Developments: Adapting to Climate Change Regulation

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**Bradley J. Condon\***  
WTO Chair Professor  
ITAM, Mexico City

**Climate change is not a concern only for the future. Fifteen of the last sixteen years have been the hottest on record. This year has been hotter than last, which was hotter than the one before last. Scientists have begun to attribute unusual or severe weather to climate change. The new Paris Agreement, an agreement within the framework of the United Nations Framework Convention on Climate Change (UNFCCC), has signalled a**

**new willingness to address climate change, as have recent statements of world leaders. Technological change is bringing clean energy sources into the mainstream. Nevertheless, it still appears that climate change mitigation will not occur quickly enough to avoid serious climate change and the subsequent need for adaptation measures. This is likely to prompt countries to take climate change measures outside the multilateral framework, whether unilaterally, bilaterally or regionally. Some of these measures could pose a challenge for the covered agreements of the WTO, which were not designed with climate change in mind.**

WTO negotiations have been bogged down for some time, leaving the dispute settlement system to develop WTO law through judicial interpretation and de facto precedents. However, judicial interpretation is limited regarding the extent to which it can adapt WTO law to the regulatory and policy measures related to climate change. Moreover, regional trade negotiations have picked up some of the slack from stalled WTO negotiations, but not always in a manner conducive to regulatory autonomy regarding climate change measures. This brief article explores some of the issues in WTO law that may affect climate change measures.

Regarding intellectual property rights (IPRs), negotiation failure at the WTO has been a potentially positive phenomenon, at least as far as IPRs for climate-ready crops are concerned. TRIPS Article 27.3(b) gives WTO Members the flexibility to provide IPRs for new plant varieties using patents, a sui generis type of IPR, or some combination thereof. Negotiations to provide clearer obligations in this regard have made no progress, given the differences of opinion among WTO Members on what the appropriate policy should be. However, regional trade agreements like the Trans-Pacific Partnership have begun to erode the flexibility of TRIPS, by





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requiring parties to accede to the 1991 UPOV Convention. This Convention is more favourable to owners of IPRs than the 1978 UPOV Convention and limits regulatory autonomy to a greater degree. This leaves countries with less flexibility to facilitate access to climate ready crops that will be more resistant to the increased droughts and floods that climate change will bring. This is particularly of concern to developing countries, because they have more subsistence farmers who are highly vulnerable to crop failures and they are primarily located in the tropics, where climate change is expected to have more severe consequences.

Clean energy subsidies are another challenge for trade regulation. On the supply side, the cost of solar energy generation recently fell below 3 cents; the Dubai Electricity and Water Authority received a bid for the third phase of the Mohammed bin Rashid Al Maktoum Solar Park for US 2.99 cents per kilowatt hour. This is half the cost of fossil fuel energy generation and this is with unsubsidized solar power. On the demand side, a group of U.S. companies, including Walmart, General Motors, Google, Facebook and Microsoft, is creating the Renewable Energy Buyers Alliance, which plans to use its purchasing power and capacity to enter long-term contracts to develop 60 GW of renewable energy by 2025. This is enough capacity to replace all the coal-fired power plants in the U.S. that are expected to retire within the next four years. The demand for clean energy has prompted some U.S. utilities to allow big private sector customers to contract to purchase of renewables-generated power at the standard retail rate over a three to fifteen-year term.

As the cost of clean energy technologies continues to decline, clean energy subsidies are likely to be motivated more by competitive concerns than by environmental goals, as governments try to position their industries in the global market. That kind of subsidy would reduce economic efficiencies in renewable energy generation and delay the transition from fossil fuels to clean energy. The WTO Agreement on Subsidies and Countervailing Measures will be useful to avoid such market distortions, because it restricts

the use of subsidies. Therefore, these WTO rules could help to reduce emissions more quickly. However, these rules are likely to be criticized as anti-environmental by those who think green subsidies are always a good thing. It is important to communicate effectively with the public regarding this very technical trade law area to promote understanding regarding the potential role of subsidies law in combatting climate change.

Environmental goods and services will play a crucial role in climate change mitigation and adaptation. Here, the failure of WTO negotiations are unfortunate, since multilateral trade liberalization in these goods and services would enhance efficiencies and lower the cost of addressing climate change. Trade liberalization in regional trade agreements is a second-best alternative to multilateral trade liberalization. This is an area where trade law issues cannot be resolved so easily via judicial interpretation.

The future of trade regulation will be shaped by the capacity of countries to make progress in multilateral negotiations, the extent to which the evolution of trade law takes place in regional trade agreements, and the evolution of trade law through judicial interpretation. The ability of trade law to adapt to and support climate regulation cannot be separated from public perceptions of how environmentally friendly trade law is. Those public perceptions, whether accurate or not, affect the political viability of trade negotiations and the capacity for trade law to adapt to the need for adequate regulatory autonomy to address climate change. Unfortunately, the political economy of trade regulation can allow special interest groups capture the regulatory process to further private profits at the expense of public goods. Those special interest groups may take steps to influence public perceptions and to engage in rent-seeking behaviour. Opposition to trade negotiations and climate change denial are examples of the former. Excessive IPRs and market-distorting subsidies are examples of the latter.

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\* WTO Chair Professor, ITAM, Mexico City and case author in the 7th ELSA Moot Court Competition on WTO Law. The author is solely responsible for the views expressed in this article and they do not reflect the views of the WTO.

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**Further reading**

Bradly J. Condon & Tapen Sinha, *The Role of Climate Change in Global Economic Governance* (Oxford: Oxford University Press, 2013)

# From ELSA Participant to Dispute Settlement Lawyer



**Iryna Polovets**  
Dispute Settlement Lawyer  
Appellate Body Secretariat,  
World Trade Organization

**My first, and pretty much accidental, encounter with the EMC2 took place in 2009. I was a Bachelor's student at the Maritime Academy in Odessa looking to engage in extracurricular activities. I came across ELSA Ukraine's call for volunteers to help organize the National Round of the EMC2 in Irpin, Kyiv Region. Without knowing much about ELSA, or the moot court itself, I still decided to give it a shot.**

It was my first visit to Kyiv and my first encounter with WTO law, which predetermined my career path. That year's case concerned biofuels and furry marmots, which sounded incredibly exciting for a novice. I gazed speechlessly at students arguing their case before a panel and thought that I would like to step into their shoes and participate in the competition. After acquiring my Bachelor's degree, I applied for a Master's programme in international economic law in Kyiv. As a Master's student, I represented my University in the 8th edition of the EMC2. We reached the semi-finals of the European Regional Round in Leuven, Belgium, and participated in the Final Oral Round in the Dominican Republic.

Having spent a year delving into the intricacies of WTO law in preparation for the moot court, a career in trade law was a natural choice for me. After the graduation, I was hired by a law firm which was supporting our participation in the moot court. Part of my responsibilities in the firm was to coach the students for the 9th edition of the EMC2. The team got to the semi-finals of the European Regional Round and placed 10th in the Final Round in Geneva. Since then, there has been a team representing Ukraine in the EMC2 every year, most of the times making it to the Final Oral Round.

Thanks to the moot court, I also got to know about the WTI and IELPO, the long-term sponsors of the competition, which have been awarding the best individual speakers and teams with certificates for participation in their weekly courses and summer schools. I was awarded a scholarship from the Swiss State Secretariat for Economic Affairs to attend the WTI's MILE Programme. The same year, positions of the Director for the Moot Court Competitions and the Assistant for the EMC2 were introduced in the structure of ELSA International Team. Although I did not have any prior experience at national level, I had experience as a participant and a coach in the EMC2 and was passionate about it. I was selected for the position of the Assistant for the EMC2, and combined working for ELSA with my studies at the WTI. My main responsibilities included registering teams, answering queries from them, and assisting the Director for the Moot Court and the Academic Supervisors in various other matters. It was also the first year when I got a chance to act as a panellist in the competition (although I must admit that being a participant is much more fun!). Since then, the management of the competition has slightly changed. The three Academic Supervisors were substituted by the Academic Board, and the Final Round



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has been consistently hosted by the WTO in Geneva, which gives the participants a better sense of what the daily work in the organization looks like, and allows ELSA to bring more Geneva-based experts of an enormous calibre for judging the competition. What has remained unchanged, however, is the unparalleled academic level of the competition, the quality of teams, and the consistently positive feedback from the participants about their experience in the moot court.

Having read numerous reports of panels and the Appellate Body while preparing for the moot court and studying at the WTI, I was always curious about how those reports are drafted and what a lawyer's work in the WTO looks like. I was particularly interested in the work of the Appellate Body – perhaps, because I had to refer to it so often! My further career path in the field was very much similar to that of many other moot court participants – I got an internship at the Appellate Body Secretariat and, later, landed a job there. Now it feels like I do the moot court every day, and I could hardly wish for more because nothing can be better than turning your passion into your daily work. As I mentioned, my experience is in no way unique – many of the young lawyers and interns working in dispute settlement at the WTO are former participants of the EMC2. Therefore, my advice for anyone considering a career in international economic law would be that the EMC2 is an absolute must!

This year I got the chance to judge the Asia-Pacific Regional Round and the Final Oral Round of the EMC2. It has been

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“ Now it feels like I do the moot court every day, and I could hardly wish for more because nothing can be better than turning your passion into your daily work.

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truly inspiring to see how many bright young people participate in competition and how much effort and passion they put into preparation. It is also remarkable how many of the EMC2 participants stay in the trade law field, and how many of them come back in different capacities – as coaches, panellists, or even case authors. All in all, the EMC2 is a great experience, both academically and socially, and once you get into it, it is really difficult to stop. I encourage everyone interested in international economic law and mooting to face the global challenge and to sing up for the next edition of the EMC2!

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# From Cloned Sheep to Fusiliscopes: 6 years of the ELSA Moot Court Competition on WTO Law (EMC2)

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Dylan Geraets  
Associate  
Mayer Brown

**The following is a brief recollection of a journey that took me all across Europe, to places such as Vilnius, Münster, Montpellier, Porto, Geneva, Warsaw, Bucharest and Passau. A journey during which I was introduced to the trade-related implications of cloned sheep, cheap cement and fusiliscopes, and at the same time have been able to build professional relationships and make lifetime friends.**

My journey began on the 4th of October 2010. "Meet David, Michael, Tim and Wouter. They have been selected to take part in the ELSA Moot Court on WTO Law, and you will be their coach." Those must have been some of the first words I heard upon my appointment as PhD Researcher at KU Leuven in Belgium. Two months ago, I had graduated having written my master thesis on WTO law under the supervision of Appellate Body Member, Professor Peter van den Bossche. Yet, my experience with Moot Courts was non-existent. After months of preparations and discussions on the relationship between the SPS Agreement and cloned sheep, we flew out to Lithuania to take part in the European Regional Round. There, it became apparent that being successful in this competition requires more than just enthusiasm. Although the team did very well and ranked 7th, the result meant that it had failed to qualify for the Final Oral Round. However, the learning experience could not have been greater. In subsequent years, the benefits of prolonged involvement in the competition became clear. KU Leuven teams started to win prizes.

Between 2010 and 2015 I have had the privilege of coaching five teams, comprising of 19 students in total. They have grappled with issues ranging from cloned sheep to cheap cement, and

from undervalued currencies to animal welfare standards. Winning awards for the victories in Regional Rounds and the prizes for Best Written Submissions has been wonderful, but the real benefit of taking part in the competition as a coach lies in seeing young individuals becoming better lawyers and true experts of WTO law. There really are few professional activities that are more rewarding than introducing four young people to the subject of WTO law at the beginning of the academic year, assisting them in their learning process and to seeing them doing well before panels of WTO law experts six months later. Coaching has enabled me to spread my enthusiasm for the law of international trade whilst at the same time allowing me to develop myself professionally. I have been able to build personal relationships with experts in WTO law, to learn how to conduct selection interviews and, most importantly, to make lifetime friends. However, the importance of the competition far transcends personal benefits and the successes of the teams that I have coached.

During my time as a coach I have witnessed the competition maturing and becoming more professional, whilst maintaining the friendly and relatively informal character that is one of its many strong points. This relative informality is characteristic of the WTO in a broader sense. Members may have disputes, but at the same time, they will also have to face each other during negotiations. Although both the dispute settlement process and the negotiating arm are governed by formal rules and procedures, personal relationships are essential. Panel and Appellate Body hearings are still characterized by aspects that have their origin in the diplomatic roots of the organization. The proceedings are less adversarial than one would see in other fora of international adjudication. Parties assist the adjudicators in their quest for legal truth, whilst, of course, putting forward their own claims. Yet, the atmosphere is often cooperative and sometimes even friendly. These aspects of real-life WTO dispute settlement proceedings are very well



*Panellist during the European Regional Round in Passau, Germany (2016)*

reflected in the EMC2. Teams are encouraged to assist the panel in figuring out the "right" or "correct" legal direction in which WTO law should evolve/develop. As such, teams are forced to consider the systemic implications of their arguments, something of crucial importance for the future of the multilateral trading system. More importantly, teams are encouraged to interact with each other as the competition serves as a place to establish life-long professional and personal relationships. The students of today are tomorrow's dispute settlement lawyers and diplomats.

One of the true strengths of this moot court is its contribution to trade-related capacity building. The creation of an African Regional Round in 2014 is a testament to this fact. It has enabled teams from Africa to compete in their own designated regional round, the highest-ranking teams of which have proceeded to the Final Oral Round in Geneva. This combined with the fact that there is an international written round has enabled students from countries that are not yet WTO Members, such as Ethiopia or Iran, to participate in the competition. These students might one day be the delegates that negotiate

their country's terms of accession to the WTO. Consequently, thanks to the generous and kind support of institutional and private sector sponsors, this competition can contribute significantly to the future strength of the multilateral trading system. Increasing knowledge of, and support for, the system is crucial in times of increasing fragmentation of international (trade) law and the rise of (mega)regionalism. It is my strong belief that the EMC2 can, does, and will continue to play an important role in maintaining the centrality of the WTO as the institutional home of that system.

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“ *These aspects of real-life WTO dispute settlement proceedings are very well reflected in the EMC2.* ”

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In 2015 I passed the coaching baton to two of my former team members, thereby hopefully ensuring the continued successful participation of KU Leuven teams in the competition. On the 22nd of February 2016, I had the great honour to sit on the other side of the table for the very first time, serving as a panellist during the European Regional Round in Passau, Germany. This new experience allowed me to reflect on the broader purpose of this moot court. There are many interesting extracurricular activities one can undertake as a student. There are also many moot courts one can take part in. There is however only one moot court that enables you to become part of the international trade law family/community, and that is the EMC2. I hope to be involved in this competition for many more years to come as it brings together a future generation of trade lawyers from all across the globe, and, hopefully, inspires them with the conviction that the multilateral trading system is something to cherish and invest in.



# *The 11th Edition of the EMC2*

## *– Back to the Roots in a New Shape*

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**Corinna Mückenheim**  
Vice President for  
Moot Court Competitions  
ELSA International 12/13

**When the ELSA Moot Court Competition started 15 years ago, the competition had a basic structure and outline. Over the years more and more teams joined, the Regional Rounds were extended to several continents and the network grew. Until that point, ELSA had “only” organized the competition with the help of an external ELSA member supporting the International Board.**

However, it became clear that the competition had outgrown its former basic structure and was in need of a full-time organization. Thus, the first step they took was the appointment of a Director for Moot Court Competitions. Nevertheless, the ELSA network realized what a major task the organization of the competition was. Thus, in 2012/2013 I was lucky to be elected as the first Vice President for Moot Court Competitions to live in the ELSA house in Brussels and to be regarded as a full time board member with all privileges and responsibilities. This was the first step towards shaping the competition into a new future.





However, in the year 2012/2013, the ten-year mark of the competition, a second change had to be made: going back to the roots in a new shape. After moving around the Final Oral Round of the competition for several years, it had to go back to the headquarters of the WTO in Geneva, where it originally started and where it belonged. Thus, in order to manage the financing by ELSA International, the competition was completely restructured, both organizationally and financially. The participation fee was drastically reduced; the teams were now responsible to find accommodation themselves (like it is the case in many other international moot courts) with a recommended choice by ELSA, travel costs were decreased by the participation of more local panellists from the WTO. ELSA International concentrated on the academic value and frame of the competition. With those changes the groundwork was set to be able to host the Final Oral Round, the most important event of the competition, every year from now on in Geneva, the heart of the WTO.

Nevertheless, the changes to the Final Oral Round were not the only ones made. The competition itself acquired a whole new outlook. ELSA International was now able to support the Regional Round organizers financially in case of loss in budget, which was a first in the history of the competition. The scoring of the written and oral performances was changed in order to have more panellists grading the submissions and developing a better scoring system. The academic board was filled with life in order to have a stable committee supporting the competition with valuable input.

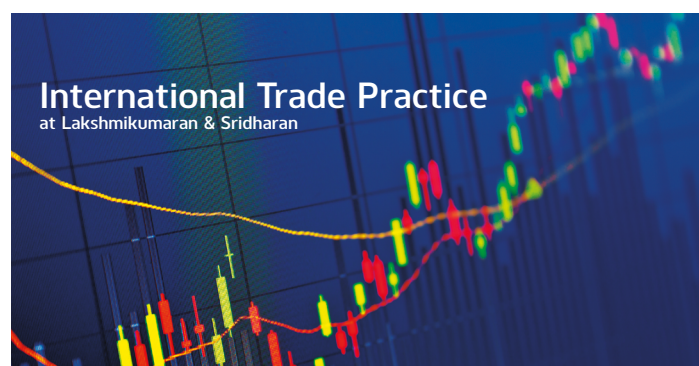
Last but not least, with the devotional help of the academic board and the WTO, especially Professor Gabrielle Marceau,

“ Nevertheless, the changes to the Final Oral Round were not the only ones made. The competition itself acquired a whole new outlook.

the competition took a very important step into its future – extending the Regional Round to Africa. After only being able to participate in the International Written Round of the competition, African students were now able to practice their oral skills within a Regional Round before continuing to the Final Oral Round. The first steps had been taken and I am very thankful to my successor, Oda Linneberg Uggen, who filled it with life.

Overall, the year 2012/2013 was affected by many challenges and changes, but it led the competition to grow and take a step further.

May the competition have an even brighter future!



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# Chapter 12 of the ELSA Moot: The First African Regional Round

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**Oda Linneberg Uggen**  
Vice President for  
Moot Court Competitions  
ELSA International 13/14

**As the responsible for the overall organization of the 12th edition of the ELSA Moot Court Competition on WTO law in 2013/2014, it is my pleasure to contribute to this anniversary publication by telling the story of what happened in the year when the first African Regional Round of the competition took place.**

First of all, it is important for me to underline that the first African Round would not have taken place within the 12th edition, hadn't it been for the tireless efforts and planning of dedicated people several years in advance, both representatives of ELSA and the WTO. Furthermore, if it hadn't been for the fact that the World Trade Organization officially decided to support the establishment of the African Round financially, it is unknown when it would have been able to materialize.

Starting my term in the International Board, it had already been expressly decided that this would be the year for the plans of an African Round to be put into action. The first step was to find contacts within African universities. This was for the purpose of both launching the call for a host university and for later on promoting the participation of teams. In lack of a complete contact list, a number of people contributed by appealing to their contacts to spread the word through emails. In addition we were simply scanning through university websites online for days. The following call was a success with several responds and tight competition between competent potential local organizers.

After a detailed evaluation carried out in cooperation between ELSA and representatives of the WTO, the University of Witwatersrand, Johannesburg was chosen as the host. Upon

this appointment followed email communication as well as Skype meetings, in order to explain the nature of the competition and start the logistical planning. The Mandela Institute, in charge of the organization at Witwatersrand University, responded at their end with swift and dedicated, professional organizing.

Following the launch of the 12th edition of the competition itself, the immediate response from teams all over the world, including the African continent was immense. It was almost to the point where all of us involved in the organization of the project were wondering if we would be able to carry it out after all. Once the written submissions were in, it was established that there would be seven African teams in Johannesburg from South Africa, Lesotho, Ethiopia, Kenya, Tunisia and the Ivory Coast.

After having traveled non-stop between Regional Rounds in Kuala Lumpur, Washington, Prague and Warsaw in March 2014, I was finally on my way to Johannesburg for the first ever African Regional Round of the ELSA Moot. So far, the rounds had been skillfully organized by the respective local hosts. The atmosphere had been tense and competitive and



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everyone who participated had shown enthusiasm and skills.

The African Round was equally successful. I have to say that the atmosphere there was special. There was a deeply positive spirit throughout the event. I believe this to be thanks to the flawless organization by the team of the Mandela Institute at Witwatersrand, the important presence of representatives from the WTO as well as other legal experts, and the tireless and driven effort of the teams and coaches.

However, this story was far from over at the conclusion of the African Regional Round. The three top teams were now heading to the Final Oral Round that was to be held in Geneva in May. It had been decided that the WTO would support two teams' participation in Geneva. ELSA made the decision to support a third team, in order to have the African Regional equally represented with the other Regions.

The nerve-wrecking race to get visas sorted in time had already started at the Award Ceremony in Johannesburg. I would like to pause here for a second and explain a bit more in detail how this played out, because it is an interesting part of this story. Since ELSA is a non-profit, student driven organization, this commitment meant that immense fundraising had to take place. Among all the contributors who made this possible, I would like to mention especially Professor Gabrielle Marceau. Her personal contribution and involvement was indispensable, and she helped us reach many others.

She also turned out to play a key role in solving a small drama we encountered with the visas. ELSA was now in a position where we needed to keep the costs for travels and accommodation as low as possible in order to manage to bring in the third team. At the same time we needed to book travels as soon as possible in time for the visas to be approved. We had been able to find flights for a good price, and needed to obtain those tickets before the price went up or the tickets were sold out. However, there was a problem with ELSA's bankcards, and we were not in that moment able to use them for this purpose. This issue came to Professor Marceau's attention, and she offered to help us out with her personal bankcard. Imagine the perplexity at the Swedish customer service department of a Middle Eastern airline, who received a phone call from Norway, in which I

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was spelling out the names of African students, and paying with a Swiss bankcard!

At the end of the day, everything worked out, and we were able to carry out our Final Oral Round with teams from all corners of the world. So what was the purpose of telling you this story? I felt it was necessary to look back at one of the important developments of the ELSA Moot court for its anniversary. It reminds everyone involved that there is no limit to what we can achieve if we only make the effort.

The African Regional round would not have taken place in my year without the financial support of the WTO, but equally important was the personal effort a lot of people have put into this competition for 15 years now. These people are the students who voluntarily work for ELSA; other students who spend months of hard work to participate, and their coaches who every year contribute to build capacity of trade law in their universities; legal experts within and outside of the WTO who make the time and share their knowledge.

The African Regional Round lives on, and so does the whole competition, together with all the people involved, bringing us a little closer to a world with mutual respect and cooperation across borders, fair trade and lawyers acting for the good of society.



# The EMC2 is a Key Starting Point to Develop a Successful Career in WTO Law!



**Altagracia Cuevas**  
Coordinator  
IELPO LL.M

***If you are pursuing legal studies and you are willing to start a flourishing career in WTO Law, the best you can do is definitely to participate in the EMC2. This competition allows you to dissect a carefully drafted hypothetical case every year in order to test students' ability to navigate around intricate trade policy issues that WTO Members are dealing with in the current international trade arena. This short article aims***

***to explain why the EMC2 is key to the Master of Laws in International Economic Law and Policy (IELPO LL.M. and/or IELPO) and how a symbiosis has naturally appeared between the former and the latter.***

The IELPO LL.M. is a program developed in Barcelona (taught entirely in English) by experts on International Economic Law from 5 continents as lecturers. It comprises three strong modules on trade, investment and competition law and policy ([www.ielpo.org](http://www.ielpo.org)). This program is addressed to talented students from all over the world who are willing to develop (or strengthen) their career in these subjects, mainly in trade law as the bulk of teaching hours is devoted to that single module.

Since IELPO's inception in 2008, the EMC2 was regarded as an innate ally. This is why IELPO entered into cooperation with ELSA International and decided to sponsor the EMC2 since the very beginning and offer prizes to the winning teams. Within the first years of fruitful cooperation, IELPO noticed the inherent talent EMC2 participants are vested with in WTO affairs as a result of their moot court preparation.



First of all, this competition enabled participants to discover in most cases a new area of expertise characterized by a myriad of technicalities and systemic effects globally which allowed expanding students' mindset towards economic, political or even policy considerations beyond simply legal conundrums. Second, working on a single case for several months led participants unfold a new passion derived from their legal studies. Third, more generally, moot courts help students earn sophisticated analytical skills, improve their writing and advocacy skills and learn how to efficiently work in teams; aspects that are very much in demand in talented and successful advocates. Fourth, students are taught to master different types of pressures in terms of questioning, time management, deadlines, team dynamics and resistance even in extreme tiredness situations. Fifth, the EMC2 is among the few truly global moot courts that allow interaction between several countries and cultures thus creating opportunities for networking, culture understanding, and tolerance whereby



participants get an opportunity to learn how to manage competitive dynamics while they create ties of friendship, understanding and amity between cultures, countries and regions at the same time. Finally, and perhaps leaving aside several other considerations that are intrinsic to mootng, the EMC2 teaches participants about how luck sometimes can play a role as the so-called ‘invisible hand’ of Adam Smith.

These are all aspects that are truly valuable to undertake IELPO studies. This is why IELPO is proud of the fact that, in 8 editions of existence, 53 former EMC2 participants have decided to join the LL.M. program from Australia, Belgium, Brazil, China, Colombia, Estonia, Ethiopia, Finland, France, Germany, Greece, India, Indonesia, Mexico, The Netherlands, The Philippines, South Africa, Spain, Ukraine and Vietnam. Likewise, over 60 à la carte participants have joined IELPO premises taking advantage of the award vouchers as part of the IELPO EMC2 prizes.

Moreover, and given the ever-increasing ties between the EMC2 and IELPO, a joint initiative appeared in order to widen opportunities to current and former EMC2 participants (and ELSA Members overall) willing to further undertake IELPO studies. A special scholarship scheme was therefore put in place giving preferential access to IELPO studies, first on an

ad-hoc informal basis, and later as part of the yearly agreement between ELSA International and IELPO-UB. To our positive bewilderment, this arrangement has been extremely successful with 25 beneficiaries: 4 recipients in 2012-2013; 4 recipients in 2013-2014; 6 recipients in 2014-2015; 3 recipients in 2015-2016 and so far 8 recipients for the 2016-2017 academic year about to begin in September 2016, after agreement between both parties to expand the scope of this arrangement from 5 to 8 scholarship recipients.

The participants under these scholarships have been truly successful, both during their IELPO studies and after them thanks to IELPO’s support through its career service. For instance, 3 of them obtained a Blue Book traineeship at the European Commission (DG Trade); 4 of them are pursuing PhD studies in Belgium and Ukraine; 4 of them have obtained an internship at the WTO Appellate Body Secretariat and 1 of them has obtained an internship at the WTO Trade & Environment Division; 3 of them are working (or have worked) as interns and/or associates at law firms such as Hogan Lovells (Brussels), Van Bael & Bellis (Brussels) and Sergii Koziakov & Partners (Ukraine). Other opportunities these students have obtained were at the World Bank, the World Customs Organization, the Arbitration Academy in Paris and the Ministry of Economic Development of Ukraine. In sum, 25 students from Azerbaijan, Belgium, Colombia, Estonia, Finland, Greece, India, Kenya, The Netherlands, The Philippines, Romania, Russia, Serbia and Ukraine have benefited from the ELSA scholarship scheme thus deciding to undertake a successful career in trade law.

Therefore, the IELPO LL.M. program truly views ELSA International as a natural partner, and the EMC2 as an excellent platform to recruit talented students to continue building capacity in WTO law. We highly encourage those law students who are willing to devote themselves to trade law to definitely participate in the EMC2 as it proves to be an invaluable experience and a first step towards building up a promising career in WTO law.

# The ELSA Spirit

By Samael Sylvester, participant 2015/2016

***At the time we were registering for the EMC2 2015/2016 we had no idea whether we would manage to win a single award or just even to participate. Most of the teammates had no passport and one of us needed a visa to travel to RSA, a visa he obtained the morning of the day we were to travel. In short we were never sure if we would participate until we boarded the plane.***

After registration we were given an identification number, Team 074, but in reality we were The University of Dar es salaam Team. Mr. Abdallah Gonzi (staff member and coach), Jackson Roselian (student and assistant coach), Rayson Luka, Aggrey Kenneth Amagu, Samael Sylvester and Nyang'anyi Taragwa.

Our coach used to tell us if we wanted to be funded by ELSA, we had to make sure our submissions were good. "Funding depends on your submissions," something we still don't know if it was true. We started to write the submissions, but we didn't have any books on WTO law, our coach knew nothing on WTO multilateral discipline on subsidies, our only assistance being Google. We googled everything, the cases, Agreement, and we even had to google anything written by Professor Andrew Lang, the case author, and it was very helpful. At the end we used to say that "with this submissions ELSA will fund us", but nobody mentioned that the submissions might win.

Three weeks before the competition someone offered to give us a book, that was Miss Magalie. She used to tell us it was the "WTO bible" by Van den Bossche. We had to travel, and cross the ocean to Zanzibar. We were all wet the time we reached Zanzibar due to heavy rain. At the middle of all this, one of our teammate dropped out of the team and we had to find another person for the oral submissions who didn't know anything about WTO law either. We requested ELSA to change a teammate and thank God they allowed us.



Our flight was scheduled to arrive at Port Elizabeth at 8:00 am and we received an email that we would be submitting the same day. We trained all night at the OR Tambo Inter' Airport in Johannesburg only to find out, after reaching Port Elizabeth, that we will submit the next day. It was such a relief.

The competition was a good experience and even though we didn't manage to qualify to the world round we learned a lot. The experience was major. We will always thank ELSA not merely for the award of the Best Written Submission, but for giving us a chance and a platform to show our abilities. We also thank the ACWL for the book on WTO law, which was part of the 'ELSA spirit award'. The book has become a new hope for many students intending to participate in the coming EMC2.

The IELPO short course scholarship by the University of Barcelona as part of the Best Written Submission Award will always be remembered. In short the future of Tanzania's WTO laws as a course of study, will always be indebted to you.

Lastly, if there is one thing we have learned from this competition is the fact that, being deprived is not always a bad thing, in most cases it is a matter of perception. WW



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Chambers Europe, 2015

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