

Appendix D to the John H. Jackson Moot Court Competition Guidelines for Oral Pleadings 2019-2020

A. General

- The moot court simulates panel hearing in the WTO, which is an **international organisation** that provides a forum for the negotiations and settling of trade disputes. Please dress and act accordingly.
- As a representative in your Government's delegation and should be tactful and diplomatic in your **language and behaviour**.
- You will deliver your presentation **in sitting**.

B. The Oral Pleadings

1. Tips for delivering your oral argument

- The oral pleadings are the most important part of your performance that weighs most in your overall score. Remember that your task is to **tell a story** that would persuade the Panel.
- **Do not read** everything from your notes. You have to be comfortable with your presentation and maintain eye contact with the Panel. Use cue cards to assist you. Remember that your oral presentation is not a simple recast of the written submission. Approach your argument as a conversation with, not a lecture to, the Panelists.
- Do not waste precious time during the pleadings looking for provisions or paragraphs, unless specifically asked by a Panelist.
- Have your WTO Agreement texts, Written Submissions, notebooks, texts and other Treaties in the correct order.
- Place Tags or "Post-it notes" in the sections you need or which you might want to refer to during your presentation.
- Practice your oral presentation many times aloud. You may want to video record your Team's presentations to see your mistakes.
- Be ready to be faced with difficult questions on factual and legal aspects of the Case as the Panel members are WTO Law, Policy, or Economics experts.



- Sometimes Panellists will ask numerous questions and may not allow you to finish your oral submissions. You may have to adjust your oral presentation on the spot.
- Remember the Timekeepers are responsible for the Timekeeping and will notify you about the amount of the time left. Don't forget to keep an eye on them! However, it is also your responsibility to monitor your own time since the Timekeepers are present to primarily assist the Panel and not the competitors.
- Many non-native English speakers are concerned with the quality of their language skills and if this presents a disadvantage. The WTO is an international institution whose official languages are English, French and Spanish. The use of these languages also presents a number of the permanent delegates with a problem daily. The best advice we can give you is to ensure that your oral submissions are well structured and simple. Do not try to use too many fancy and/or technical words if it is not necessary, or especially if you do not know the meaning of them.
- Emphasise what your point is and express your submissions with the appropriate conviction, keeping in mind that the WTO is a diplomatic organisation.
- If you need to take a moment to gather your thoughts, consult your team members or your notes, or find the right word, do not hesitate to ask the Panel to give you some time for that.
- Remember that you are not allowed to present any written materials to the Panel or the opposing party.
- Ensure that you do not have any documentation that reveals the identity of your university.

2. Communication with Panellists

- Panelists in the WTO are international trade law experts, economists, trade diplomats, trade or policy negotiators, or sometimes industry experts (e.g. a scientist in a dispute on a public health issue) – they are **not judges**. Therefore, you should refer to them as "Madam Panelist" or "Mister **Panelist**" or simply by their name e.g. "**Ms. Jones**" or "**Mr. Smith**". The nametags of each Panelist will be placed on Panel table.
- In addition, the Chair of the Panel should be addressed as either "**Madam Chair**" or "**Mister Chair**"; or "**Madam Chairperson**" or "**Mister Chairperson**".
- Another unique aspect of the WTO Dispute Settlement mechanism is the courtesy that disputing "**diplomatic**" delegates show to the Panel or one another, for example:
 - "**Mr. Panellist ("Madam Chair" or "Mr. Smith"), it is the position of my Government or it is the position of (Country Name), that ...**".
 - "**My colleague for the Country of (Country Name) presented to this Panel that**



...”.

- Terms such as: "Your Excellency", "the Honourable Panel in EC-Chicken Cuts Case..."; "this Honourable Panel"; "Your Honour" and other terms used either in municipal courts or the International Court of Justice **are not used** when presenting submissions to a WTO Panel. Therefore, students should ensure that these terms are not used during their oral presentations.
- Sometimes students preface their answer to every question with “Thank you for your question”. Be selective and creative with the initial words of your response, otherwise it will appear to the Panel that you are either overly nervous, don’t understand the question, or worse don’t know the law. Furthermore, most John H. Jackson Moot Court Competition Panellists intently dislike this phrase.

3. Questions from the Panel

- A presenter may be asked many questions during oral submissions **and rebuttal and sur-rebuttal.**
- Such questions can frustrate a presenter, break motivation or even ruin concentration. Relax, calm down and do not panic – if you need to take a moment, then ask the Panel for additional time as they will usually grant such a request (**keep in mind however, that the clock is ticking**).
- It is highly recommended that competitors **understand the larger policy and/or international relations** issues that may be at play in relation to the trade dispute at hand. Panelists like to pose policy-based questions, particularly at more advanced rounds of the competition.
- Recalling that Panels consist of diplomats, albeit with WTO Law expertise, these individuals **are highly trained in non-verbal communication skills. Why is this important?** For example, if a Panel’s question relates to something that is not on-point with the competitor’s submission, and the presenter displays his/her annoyance via facial expressions, a Panel is likely to interpret such a reaction as either:
 - Lack of WTO Agreement and/or previous WTO case knowledge;
 - Lack of John H. Jackson Moot Court Competition Case facts and/or issue knowledge;
 - Unwilling to assist the Panel (a true diplomatic faux pas); or
 - Arrogance or even ignorance.

Remember you are on show to potential future employers, so maintain a professional exterior at all times.

- A Presenter is permitted to seek assistance from a fellow team member to answer a question from the Panel. This does not mean that you can ask your colleague to whisper the answer to you. A question from the Panel may be referred for answering by your fellow team member (**but once again keep the time allocation issue in mind**) for example: **“Madam Chair, I will ask my colleague Mr X to address/answer your question in his allocated time.”.**



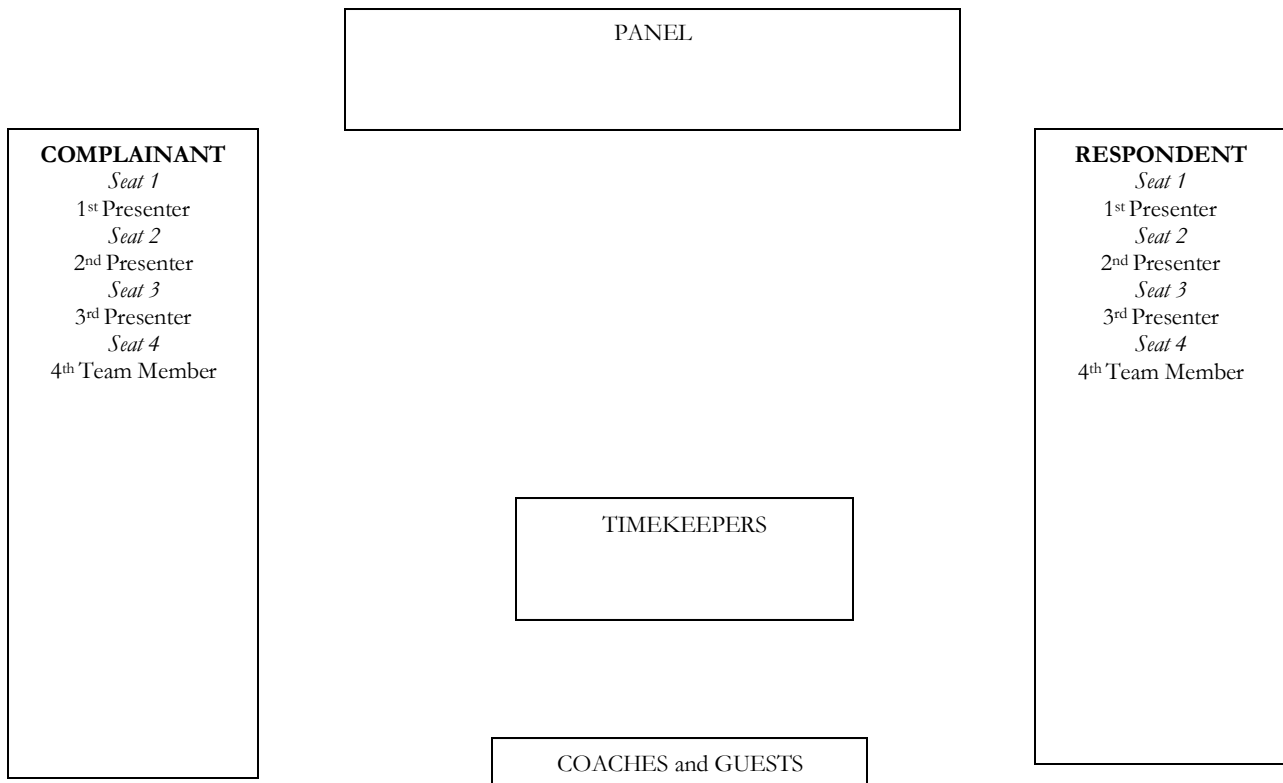
- Panellists will be instructed **not to ask** several questions in one statement.
- Furthermore, each presenter should be given time to answer each question before the next is asked by the Panel.
- **However, it is a tough competition and the Panellists, who are highly qualified in WTO Law, Economics, Policy and the Dispute Settlement process often ask many questions in order to understand your argument or test your knowledge or to even guide you.**
- On the other hand, some Panellists prefer not to ask questions and just listen or they may wait until the Team has completed its presentation and then ask questions.
- This means, that you must very quickly assess the Panel's questioning style and adjust your presentation accordingly.
- Remember that **time shall not be stopped** when a question is asked or answered!
- Furthermore, the art of diplomacy and advocacy is to persuade the listener to your point of view. Therefore, never pass over any questions and remember to answer them all the moment they are asked. It is better to take 20-30 seconds for preparation and answer the Panel's question than giving an incorrect answer or trying to avoid answering the question.
- At the same time, try to avoid saying things like **"I will answer that question later";** or **"I will get back to it"**. Firstly, there might not be enough time later for you or any member of your Team to answer the question. Secondly, the Panel may be trying to steer you to the "proper issue" via questions and finally, it is simply "bad form" to avoid questions from the adjudicators. However, if there is no way you can answer the question at the moment when it is asked, **make sure that you indeed answer it later!**
- If neither you or your Team Members cannot answer the question, it is better to be honest and say so, for example:
 - **"Unfortunately, the delegates of (Country Name) are unable to assist the Panel with their question."**
- However, it is permissible to give some form of an answer, for example:
 - **"My colleague Mr. X will address that issue in full, but if I can give the Panel a brief answer?"**
- A simple point but one often forgotten, **if you ask the Panel a question**, such as the point above, **make sure you wait for a response before launching into your statement.**
- Recalling that the presenter submitting does not have to be the person to answer a question, therefore, if the question is related to the argument that your colleague has or will present, he/she can answer in his/her allocated time and the original Presenter can continue his/her presentation.



C. The procedure during the Oral Pleading

1. Venue

- The competition Hearing Rooms will look like the following:



- Please note that all four (4) Team Members are permitted to sit at their Parties' table, but only three (3) Team Members are permitted to present oral submissions.
- Coaches are not permitted to sit at the Panellist table, nor are they permitted to speak to their team during the Oral Pleading Sessions.



- ELSA Members and Timekeepers will be present during all Preliminary Rounds and Elimination Rounds.

2. Opening of Panel Hearing

- Timekeepers lead the Panel into the Hearing Room and make a formal announcement that the Panel session is now open, **for example:**
 - **"Please stand, the WTO Panel in the "(Case Name)" is now in session. The Panellists sitting in this session are (Timekeepers will announce the name of the Panellists and who will act as Panel Chairperson). Please be seated."**
- Panel Chairperson will welcome delegates to the Hearing and then will introduce him/herself and members of the Panel, **for example:**
 - **"Good morning (afternoon), the Panel welcomes delegates from the Countries of (Country Name) and (Country Name) to this Panel hearing on the "(Case Name)". Firstly, I would like to introduce myself, I am Mr. XX your Panel Chairperson from XX and sitting today with me is Ms. XX on my left from XX and on my right Dr. XX from XX."**

3. Confirmation of Appearances and Time Allocation

- Panel Chairperson will then request Appearance, for example:

"The Panel now wishes to hear the Appearances for the Complainant in this matter."
- Complainant Delegation Head (the nominated Team Captain) will make the opening statement, for example (and if you have four members in your team):
 - Complainant - Delegation Head: **"Good morning members of the Panel, my name is XX and together with my colleagues Ms. XX, Ms. XX and Mr. XX we represent the Complainant in this matter, the Government of (Country Name). Today my colleagues and I will present four issues: Ms. XX will address the issues of "ABC", Ms. XX will address the issues of "DEF" and "GHI" I will address the issue of "JKL". Mr. XX will not present oral submissions today, however with the Panel's permission I will present the Rebuttal."**



- ◆ Panel Chairperson will thank Complainant Delegation Head. He/She will then request the Respondent Delegation Head to present Appearances and time allocations, for example (and if you only have two members in your team):
 - **"Thank you, Mr. XX. May we now have the Appearances for the Respondent in this matter?"**

- ◆ Respondent Delegation Head (the nominated Team Contact Person) will make the opening statement, for example:
 - Respondent - Delegation Head: **"Good morning members of the Panel, my name is Mr. XX and together with my colleague Mr. XX we represent the Respondent in this matter, the Country of (Country Name).

Today my colleague and I will respond to the four issues presented by the Complainant: Mr. XX will respond to the issues of "DEF and GHI" and I will respond to the issue of "JKL and then ABC". With the Panel's permission, I will present the sur-rebuttal."**

- Panel Chairperson will thank Respondent Delegation Head. He/She will then check with the Timekeepers if the Appearances presented by the two Delegation Heads reflect the Appearance Sheets, for example:
 - **"Thank you, Mr. XX. Timekeepers are there any anomalies in the oral statements made by the Delegation Heads and their "Team Appearance Sheets?"**".

- Timekeepers will respond to the Panel Chairperson, for example:
 - **"Mister/Madam Chairperson, the oral statements presented by the Delegation Heads are all in order (or state any anomaly that has arisen and be guided by the Panel Chair if any corrections are required due to a discrepancy(ies))."**



4. During Oral Submissions

- It is the role of the Timekeepers to monitor on the Panel's behalf the time of speaking per each Presenter. Each Orator must at least speak 7 minutes during the main OPs.
- Furthermore, the Timekeepers will monitor on the Panel's behalf that only one Team member presents the rebuttal/sur-rebuttal.
- The Timekeepers will show the remaining time with time signs, which will be displayed to the Panel and the teams. The Timekeepers will show the time of the speaker.
- The maximum time allocated for one speaker is 25 minutes. When 25 minutes (per speaker) has been reached, the Timekeepers will display the TIME sign and interrupt the Panel to advise that time for the speaker to present has expired.
- Before a Team presents main oral arguments beyond the allocated 45 minutes, they can ask the Chairperson for the extension. Every oralist on Complainant side can ask for 2 minutes of extension. At the end of Complainant's pleading, Timekeepers add up all the extensions that were actually used by Complainant and provide this time to Respondent (e.g. Oralist 1 asks for extension of 1 minute and uses 55 seconds, Oralist 2 asks for extension of 2 minutes and uses 1 minute, the time provided to Respondent will be 1 minute and 55 seconds).

5. Primary Oral Submissions

Once the Panel Chairperson has ascertained if the Appearances and Statements are in order, he/she will ask the Complainant to commence oral submissions and request the Timekeepers to "start the clock" for example:

- Complainant will commence and conclude oral submissions
 - Complainant - Delegation – First Presenter: **"Good morning members of the Panel, my name is Ms. XX** (the first part of this statement is made by the individual as the original reference was presented by the Delegation Head – this is the opportunity for an advocate to capture the Panel with his/her personality) **and I will be addressing the issues of "ABC"...** (presents submissions and answers Panel's questions)." At the conclusion of submissions, the presenter states: **"Mister/Madam Chairperson if the Panel has no more questions** (wait for an acknowledgement from the Panel), **that concludes my submissions. My colleague Ms. XX will now address the Panel."**
 - Second Presenter: **"Good morning members of the Panel, my name is Ms. XX and I will be addressing the issues of "DEF & GHI" ...** (presents submissions



and answers Panel's questions)." At the conclusion of submissions, the presenter states: **"Mister/Madam Chairperson if the Panel has no more questions (wait for an acknowledgement from the Panel), that concludes my submissions. My colleague Mr. XX will now address the Panel."**

- Final Presenter: **"Good morning members of the Panel, as stated my name is Mr. XX and I will be addressing the issues of "JKL ... (presents submissions and answers Panel's questions)." At the conclusion of submissions the presenter states: "Therefore members of the Panel, it is the submission of the Government of (Country Name) that the Respondent has breached "Rule 123 of the WTO Agreement" and requests that the Panel determine that their "456 measures be deemed WTO inconsistent". If there are no further questions from the Panel (wait for the Panel's acknowledgment or questions), that concludes the submission of the Complainant, the Government of (Country Name)."**
- Panel Chairperson will thank the Complainant for its submission and ask the Timekeepers if the Team kept within its nominated allocated Time.
 - **"Thank you, Mr. XX. Timekeepers did the Complainant Team present their oral submissions within the allocated Time?"**
- Timekeepers to advise the Panel Chairperson any additional time utilized by an individual Presenter or the overall Team time, for example:
 - **"Mister/Madam Chairperson, the oral submissions presented by the Complainant exceeded the 45 minutes allocated for the Primary Submissions by three (3) minutes."**

The Panel Chairperson should acknowledge the Timekeepers statement, check with his/her fellow Panellist if a time extension will be granted to the opposing team and then announce the actual time extension.

- **"Thank you, Timekeepers, if my fellow Panellist agree (Chairperson should check with each Panellist) we will grant the Respondent an additional three (3) minutes. The Panel will now hear submissions from the Respondent, the Government of (Country Name). Timekeepers you may commence timing."**
- The Timekeepers must record if a time extension has been granted by the Panel Chairperson.



- Respondent will commence and conclude oral submissions, for example:
 - Respondent –Delegation – First Presenter: **"Good morning/afternoon members of the Panel, I am Ms. XX and I will be responding to the Complainant's submissions regarding the issue of "ABC and JKL. (presents submissions and answers Panel's questions)." At the conclusion of submissions, the presenter states: "If the members of the Panel have no more questions (wait for an acknowledgement from the Panel), that concludes my submissions and I will hand-over to my colleague Ms XX."**
 - Final Presenter: **"Good morning/afternoon Members of the Panel, as stated my name is Mr. XX and I will be responding to the issues of "DEF and GHI" (presents submissions and answers Panel's questions)." At the conclusion of submissions the presenter states: "Therefore members of the Panel, it is the submission of the Government of (Country Name) that the Complainant has not proved a breach of "Rule 123 of the WTO Agreement" and requests that the Panel determine that our "456 measures are WTO consistent." If there are no further questions from the Panel (wait for the Panel's acknowledgment or questions), that concludes the submission of the Respondent, the Government of (Country Name)."**
- Panel Chairperson will thank the Respondent for its submission and ask the Timekeepers if the Team kept within its nominated allocated Time.
 - **"Thank you, Mr. XX. Timekeepers did the Respondent present their oral submissions within their allocated Time?"**
- Timekeepers to advise the Panel Chairperson any additional time utilized by an individual Presenter or the overall Team time, for example:

"Mister/Madam Chairperson, the oral submissions presented by the Respondent did not exceeded 38 minutes, which include the additional three (3) minutes grant by the Panel."

6. **Rebuttal and Sur-rebuttal Submissions**

- The Panel Chairperson should acknowledge the Timekeepers statement and conclude the Primary Submissions and commence Rebuttal and Sur-rebuttal. He/She will ask the



Complainant to commence with his/her presentation and request the Timekeepers to “start the clock” for example:

- Complainant to present rebuttal
 - Presenter: **"Members of the Panel, the Complaint asserts that ..."** If there are **no questions from the Panel** (wait for the Panel's acknowledgment or questions), **that concludes the rebuttal for the Complainant."**
- Panel Chairperson will thank the Complainant for its rebuttal and ask the Respondent to commence his/her sur-rebuttal.
 - **"Thank you, Mr. XX. May the Panel hear the sur-rebuttal from the Respondent. Ms. XX you may present the Respondents sur-rebuttal. Timekeepers you may commence timing."**
- Respondent to present rebuttal, for example:
 - Presenter: **"Members of the Panel, the Complainant has asserted that..., but has failed to present clear and conclusive evidence. If there are no questions from the Panel** (wait for the Panel's acknowledgment or questions), **that concludes the sur-rebuttal for the Respondent."**

7. Closing of Panel Hearing

- It is the responsibility of the Panel Chairperson to indicate to the Timekeepers that having heard the Oral Submissions, the moot is now concluded.
- Once the Panel Chairperson has made his/her announcement the Timekeepers should announce, for example:
 - **"Ladies and Gentlemen, we ask all competitors and guests to please leave the Hearing Room in order for the Panellist to complete their Marking Sheets and prepare comments for the parties involved. Teams and guests will be recalled by the Timekeepers for the informal Feedback session whereby the Panel members will provide comments to the competitors on their style and structure only. Thank you for your co-operation."**



- One Timekeeper will escort the competitors and guest out of the Hearing Room, whilst the other will arrange with the Panel how to proceed.
- Both Timekeepers should leave the Hearing Room to allow the Panel to mark individually and independently, however they should be stationed just outside the room in order to respond to the Panel Chairpersons instructions.

8. Recalling of Competitors and Guests for Panel Feedback

- Once competitors and guests have returned to the Hearing Room, it is at the discretion of the Panel how the feedback will be presented. Panellists are not allowed to provide substantive feedback and usually comment on style of the presentation.

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ELSA International 2019/2020

