

**2002 ELSA Moot Court Competition  
on the Law of the  
World Trade Organization**

**The Case**

(1) The Empire of Avalon is a constitutional monarchy in East Asia. It is characterized by a unique combination of very traditional cultural and social structures and a very efficient and modern economy. Even though the domestic market is important, more than 50% of GDP is earned by exports. The Bohemian Union is a customs union of 24 Western democratic States. It is characterized by great diversity of its members internally and the political requirement to speak with one voice in trade matters externally. Next to the USA, the EU, China, and Japan, Avalon and Bohemia are the major players in international trade with the biggest domestic markets and the largest shares in imports and exports of goods and services. All of them are also very active members of the WTO.

(2) Due to the fact that the majority of its population lives close to the coast and that agricultural land has always been scarce, the people of Avalon have traditionally relied heavily on fish in their diet. Nowadays, Avalon has one of the most efficient fishing fleets in the world and is not only supplying its own people but is also exporting large quantities of fish (fresh, frozen, and tinned) to other markets, including Bohemia.

(3) Whale meat is among the traditional food appreciated on special occasions in Avalon to this very day. Consequently, Avalon has been very reluctant to participate in international efforts for the protection of whales from the earliest beginnings in 1902 to the present day. Avalon did, however, sign and ratify the 1946 International Convention on the Regulation of Whaling. After the moratorium on commercial whaling came into force in 1982, Avalon began to issue special permits in limited numbers to its fishing industry, allowing the killing of whales for scientific research. This was done in full knowledge of the fact that the whale meat would end up on dinner tables of wealthy Avalon families and irrespective of stock status and schedules or quotas adopted by the International Whaling Commission.

(4) During the 1990s, Avalon issued around 500 special permits per year, mainly for the killing of minke whales in Antarctic waters. However, among the special permits were also some for humpback and blue whales. Japan, Russia, and Norway had also permitted limited whaling during the same period. All this became known to an international public in the year 2000, when updated estimates were published showing that conservation efforts with respect to these species of large whales had still not produced the desired effects and that their estimated global populations continued to be very low, with a real risk of extinction, in particular in the case of blue whales.

(5) In response to the new data, several international NGOs joined forces to examine the practice of Avalon and to step up the pressure on this country to discontinue issuing licenses for whaling under the guise of scientific research. The NGOs found evidence that Avalon had not only applied a rather generous interpretation of the exemption for scientific research. It was also found that occasionally, whale meat had been exported by Avalon companies to other Asian countries in violation of international restrictions on trade in whale products included in the Convention on International Trade in Endangered Species (CITES), to which Avalon is a party. Finally, the NGOs discovered that whaling was not very profitable for the fishing companies in Avalon, in spite of very high prices for whale

meat. However, all of the companies engaged in whaling were making substantial profits with other fish, including tuna, the bulk of which was exported to Western markets.

(6) The NGOs used these facts to launch a powerful lobbying effort in the USA, the EU, and the Bohemian Union, for sanctions against Avalon. *Inter alia*, they promoted import restrictions on tuna in order to force the fishing companies in Avalon to give up whaling. A number of Bohemian fishing companies, who had been struggling against the competition from Avalon, supported these efforts and under strong pressure from the public, the Council of Ministers of the Bohemian Union, in late 2000, adopted an import ban on tuna from fishing companies in Avalon who were also engaged in the killing of whales of any kind. This import ban entered into force on 1 January 2002.

(7) Already in mid-2001, Avalon had addressed a formal request for consultations to Bohemia and had copied this to the Dispute Settlement Body (DSB) of the WTO and to the WTO Council for Trade in Goods. The consultations were sought under Article 4 of the Dispute Settlement Understanding (DSU) and reference was made to Article XXIII of the GATT. Avalon claimed that the import ban on its tuna was in violation of Articles I, II, XI, and XIII of the GATT. Bohemia had entered into consultations with Avalon as required by Article 4 DSU but the parties had been unable to settle the dispute bilaterally.

(8) After additional negotiations, Avalon formally requested the DSB to establish a panel. The panelists were nominated by the Secretariat and accepted by the parties, who also agreed to apply the standard terms of reference. The panel informed the parties of its intention to apply the Rules for the ELSA Moot Court Competition in addition to, and, where necessary, with priority over the Working Procedures in Annex 3 of the DSU.

(9) The panel invited the parties to submit their final written memorials by 31<sup>st</sup> of January 2003. Finally, the panel requested the parties to include in their memorials a reasoned opinion whether or not the panel should hear representatives of the NGOs, who had compiled the fact sheets on Avalon's whaling practices, pursuant to Article 13 DSU.

Applicable Law:

- General Agreement on Tariffs and Trade, as amended
- all relevant WTO agreements
- 1946 International Convention on the Regulation of Whaling
- 1973 Convention on International Trade in Endangered Species (CITES)
- other rules of international law binding upon States regardless of specific ratification