

EMC² 2011-2012

TIPS-4-TEAMS for the Written Submissions

The ELSA Moot Court Competition on WTO Law (EMC²) is an academic competition with the aim of helping students develop their written and oral legal skills involving WTO Law. Whether you are preparing to compete in the International Written Round or presenting your Written Submissions for scoring before an ELSA or non-ELSA Regional Round, you should bear in mind the role that the Written Submissions play in the competition.

Importance of Written Submissions:

- Preparing Written Submissions provides students who wish to pursue a career in international trade law with the opportunity to develop their written communication skills.
- In the WTO dispute settlement process, many Members only participate as third parties (see the *Dispute Settlement Understanding Agreement – Article 10*). Often a third party is given just a few minutes for its representative to orally explain its legal arguments. Consequently, this means that many WTO Members must rely on the substance and persuasiveness of their written submissions.
- Competitors should keep in mind that the Score of each Oral Preliminary Round also includes the Score of the relevant Written Submissions.
- Pursuant to **Rule 6.9.10** a total of 30% of the Overall Written Submission Scores will count towards the Overall Team Score at the conclusion of the Preliminary Rounds of an Oral Pleading Round. For further information also see **Rules 7.4.2.2 and 7.4.3.2** that provides that the ratio is set at 70 % (Oral score) to 30 % (Written Submissions scores) for both the Regional Rounds (ELSA and non-ELSA) and the Final Oral Round.
- Therefore, the quality of the Written Submissions is an important element of the oral pleading sessions of the competition.
- The reason why the Written Submissions count toward the Oral Pleading session Overall Team Score is that from a clinical legal education perspective, going through the process of producing written briefs assist in ascertain the important legal issue in the Case. This in turn assists Participants to develop cohesive, logical and persuasive oral argument.
- This is a tried and test process which all good litigators globally undertake.

Preparing the Written Submissions:

- Commence with reading the Rules of the EMC², the Appendixes, the Case and the Clarifications very carefully.
- Try dividing the work either by having one part of the team working on the Complainant's issues and the other working on the Respondent's issues; or dividing the overall issues to be researched. Maybe your coach has another idea!

- Coordinate, plan and execute! Respect every team member's suggestions/ideas, as the one you discard, just might be the most important.
- Ask former participants for general assistance but only to the extent permitted by **Rule 3.4** - they might have some useful ideas to share with you.

Form requirements

- Make **Part II – Section 6** of the EMC² Rules - “Procedures for Written Submissions” - everyday reading.
- Format your document according to the Form Requirements at the commencement of drafting the documents.
- Use *track changes* as this will help you keep a record of changes or use a draft document system (e.g. EMC²_Respondent_Written Submission_Draft #10).
- Always make a minimum of two (2) back up electronic copies of your work – late dispatch of the Written Submissions due to computer problems is not a suitable reason to escape penalties.
- Double-check your Written Submissions before dispatch to ensure they comply with the Rules.
- The easiest way to maximise the points for your Written Submissions is to minimise the amount of penalty points given, so keep your Written Submissions within the Rules.

Contents of the Written Submissions:

- At all times remember you are dealing with a “potential” real life situation and the Panellists chosen to mark your Written Submissions are WTO legal experts.
- Before you commence writing, make sure that you not only know the facts in minute details but you also understand the Case and Clarifications as a whole - that is, from an economics, policy and international relations perspective.
- Once you understand the legal claims as presented by the Case Author, you must identify the relevant WTO Law at issue and analyse the facts in that context.
- Be sure you review the specific WTO Agreements identified by the Case Author, as well as any other relevant policy (trade, health, intellectual property etc.) – remember this is a diplomatic institution and the politics of international relations played an important role when the WTO Agreements were negotiated and therefore are relevant in a dispute settlement process.
- Identify the relevant WTO Agreements and specific articles as well as the elements required to substantiate or reject the legal claims.
- Recalling that the WTO is an international intergovernmental institution whose official languages are English, French and Spanish, we wish to draw participant's attention that many of the WTO legal experts, which are part of the Written Submissions Panellist Pool, regularly work in either French or Spanish. Therefore, we highly recommend that you keep your arguments simple and use plain English so that every reader can understand your proposition.
- Use simple structures, avoid too many words to express a single concept, and also avoid using double negatives or the passive voice.
- Use short sentences (approximately 25 words or less).
- Pay attention to the use of correct English grammar and punctuation.
- Arrange the words with care.
- Read the attached Appendix I which is an extract from an article in ELSA's Synergy, on Legal Writing.

Resources

- The Case Author has provided a list of relevant primary material at the end of the Case which every competitor *must read*. These documents are available by downloading from either www.elsamootcourt.org or the WTO's website at www.wto.org.
- The best research material may be found on the WTO's website. It not only houses electronic versions of the WTO Analytical Indexes (an analysis of all legal decisions on WTO Agreements from 1995 to 2001) but also general information on all legal topics as well as access to the WTO bookshop if you wish to purchase text or use this as a resource to identify texts relevant to the Case www.wto.org
- World Trade Law is an exceptionally good site for information on WTO Agreements and Cases www.worldtradelaw.net
- Cambridge University Press publish several WTO texts www.cu.edu.uk
- Cameron May also publishes several WTO texts www.cameronmay.com/
- For advice in citing materials, please refer to the Oxford University manual titled: Oxford Standard Citation of Legal Authorities (OSCOLA) at www.law.ox.ac.uk/oscola
- Consult past "EMC² Written Submissions at www.elsamootcourt.org/tipshints/

Get ready for the global challenge!

Good luck and have fun!

ELSA International and the Academic Supervisors

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APPENDIX I - TIPS-4-TEAMS – THE WRITTEN SUBMISSIONS

1. Legal Writing (article published in ELSA Synergy No. 2/2003)

Good legal writing rewards its practitioners handsomely. We write now more than in any age. If so, and if writing is our main means of communication and persuasion, then we should hone and perfect the skill, just as an athlete trains zealously or a musician practices her instrument.

Yet we often characterise lawyers as long-winded, verbose and excessively complex in their language. People struggle to understand the documents that lawyers write. Today, written submissions to a court are more important than ever. Cases can be decided on written evidence alone. Your skill in writing will influence your client's cause – perhaps the most important reason why to develop that skill.

The Five Commandments are core principles of good legal writing:

1. *You shall write as plainly as possible*: Write “end”, not “termination”.
2. *You shall avoid long sentences*: Twenty words are enough.
3. *You shall use the active voice*: You shall say, “The judge dismissed the case”.
4. *You shall avoid archaic words*: Words like “hereinbefore” and “aforesaid” shall be avoided.
5. *You shall be concise*: The end.

Try this approach when writing a law school assignment: As you read the problem slowly, underline, highlight or note what you think are the main issues in your question. Be prepared to change these. At the start, you will have only a rudimentary idea of the issues and the structure of your assignment.

Read two or three of the main cases and texts on the specific area. A shortcut to a sophisticated understanding of the area is to read a good journal article on it, even at this early stage. Start to rough out an answer, on your computer. Stick to your issues. Use headings freely. These can be removed later. In the meantime, they keep you on the relevant points. Try framing your headings as questions. Then you are forced to think of the answer as you add new material.

When you have a skeleton answer, read widely and add to your answer as you go along, making the best use of your computer. Do not try to complete all your reading and then sit down to write, in the hope that it will all be retained and mixed properly in the cranium. It will not be. Add new insights, new authorities, and better analysis, as you go. Polish, polish and polish some more.

As your understanding on the law and issues matures, you will change your emphasis. The issues may change, too. The more reading and polishing you do at this stage, the more sophisticated your final result will be.

Your professional life will be one of writing letters and legal opinions. Therefore, your adroitness in letter and opinion writing will be the most lasting mark of your professional skill. Some rules:

- *Be plain.* Lack of clarity shows an unclear mind.
- *Be concise.* A verbose letter wastes time.
- *Use sub-headings.* Helps you order your thoughts and gives your letter structure.
- *Always use a spell-checker:* There is no excuse for simple spelling errors. They show you up as careless.
- *Write to your readers:* You will write a different letter to a professor of law than you will to a professional boxer. Know your audience.
- *Never patronise your readers:* You are trying to persuade, not alienate!

While at law school, deliberately embark on a program to improve your writing. Buy a couple of books on good writing - Martin Cutts' Plain English Guide (OUP) is first rate - and read a chapter, every now and then. Learn to edit your own work. There are computerized writing analysis programs (*Stylewriter*) to assess your writing clarity and skill. Seek to write an article or short note for a law journal. Enter writing competitions. The heat of competition will encourage you to improve your research and writing. A meritorious performance in writing competitions will be.