



5TH GNLU INTERNATIONAL MOOT COURT COMPETITION, 2013

THE CASE

ZWOVKA - ZWOVKA ENVIRONMENT AND SECURITY OF CHILDREN ACT

Complainant - Enroda

WT/ DS/***

- 1) Zwovka is a developing country with a population of over a billion. Thirty five percent of the population is under the age of 18. As per the 1990 and 2001 Census, 70% of the population belonged to the Troikan faith while the remaining 30% practiced the Eskron faith.
- 2) In Troikan mythology, warrior prince Legann and fifteen of his brothers fought, and finally succeeded in a ten year long war against the evil empire of the Demogz who ruled over Zwovka since the beginning of time. Today, Legann and his brothers are considered folk heroes. Dolls/Action figures depicting them are very popular among the children, especially those within the age group of 4-8 years. The dolls are also popular, albeit to a limited extent, among some children of a higher age group and adults, many of whom purchase the dolls as collector's items. Followers of the Eskron faith are, however, prohibited under their religious laws from owning or possessing a doll which depicts a human form. Therefore, it is very rare for people who follow the Eskron faith to either own or possess such dolls.
- 3) Traditionally, such dolls were made of wood and painted with natural colours. The dolls are classifiable under the Harmonized System Number ("HSN") heading 9503. Since 2000, all such dolls are manufactured using lead based paint. On an aggregate, the dolls contain 300 part per million (ppm) of lead.
- 4) The Troikan Religious Council ("TRC") in 1990 enacted a religious directive under which only artisans or entities specifically licensed by the TRC could manufacture such dolls. Religious directives have the status of the law of the land in Zwovka and specially designated religious police are given the right of enforcement. However, under the Zwovka Uniform Code, the rights of the religious police are restricted to verbal warnings and confiscation of properties which violate religious directives. The religious laws are



enforced against private citizens who follow the Troikan faith and against all entities engaged in commercial enterprise in Zwovka.

- 5) The TRC stated that the objective of this directive was to ensure that the depiction of the folk heroes through the dolls was uniform and not distorted. Also, the purpose was to reduce the number of dolls available in the market to create and retain a sense of enigma. Only few artisans were granted the license in 1990. The artisans benefitted from this oligopolistic structure and consolidated to become two independent companies. As of 2012, the two companies have a total production capacity of 200,000 units a year and are the only license holders. An unregulated market for manufacture of such dolls exists with an estimated capacity of 1.75 million units.
- 6) In 1985, Zwovka started a process of economic liberalization and rapid industrialization. Under the Government Industrial Development Cooperation policy enacted in 1986, the government provided financial support to selective industries which were considered to have the highest potential for export lead growth. Two of such industries were the lead battery manufacturing industries and electronic industries. All industries, including the doll manufacturing units are located in Industrial Zones (“**IZ**”). IZs are essentially industrial complexes where the factories, as well as residential complex for workers and management are located. Such complexes also have primary and high schools for children of the factory employees.
- 7) In 2002, the Group for Nurturing the Little and the Underprivileged, a non-governmental organization (“**NGO**”) issued a report highlighting that children raised in IZs were in particular risk of chronic exposure to lead poisoning. About fifteen percent of the population under the age of 18 are raised in IZs.
- 8) In 2008, the Government of Zwovka introduced the Health Act under which companies were required to ensure that the factory units of the lead based or lead emitting industries inside the IZs remained closed to children. While recognizing the Health Act as an important step in the right direction, Group for Nurturing the Little and the Underprivileged and other NGOs voiced concerns that the Act stopped short of doing enough.



- 9) Enroda is a least developed nation located on the eastern border of Zwovka with a population of five million. The country has a thriving toy industry and exports the following toys only to Zwovka falling under the HS Heading 9503:

Tricycles, scooters, pedal cars and similar wheeled toys

In 2010 and 2011, Enroda exported 4 million and 5 million units respectively of the above mentioned toys to Zwovka. The toys are popular among children aged 3-6 years.

- 10) Historically, Zwovka and Enroda have had difficult political relations. The countries fought three wars in between 1940-1967. There have been no major wars or escalations post-1967. While the relation is otherwise normal, Zwovka has sometimes accused Enroda of using non-conventional forms of warfare. For instance, in 1995, Zwovka accused the Enroda government of not taking sufficient action against an organized crime syndicate based in Enroda which was engaged in the production of fake Zwovka currency notes. Enroda, on its part has expressed helplessness in controlling the problems caused by organized syndicates and organizations.

- 11) One such organization is the Organization for Anarchy in Zwovka (“**OAZ**”). The organization was started by some retired military officials. It is a secret organization and unconfirmed reports suggest that its membership is of over half a million. In 2002, statesecrets.com, a website which made a reputation publishing secret official state cables, leaked a supposed cable exchanged between the Zwovkan Embassy in Enroda and the Government in Zwovka. In the cable, the Zwovkan Ambassador to Enroda warned the capital that they had reasons to believe that many members of Enroda’s political and business class were either members or sympathizers of the OAZ. Zwovka has neither accepted nor denied the existence of this cable.

- 12) For years the OAZ has advocated that its members had a patriotic duty “*to do everything in their capacity to undermine Zwovka*”. Some of their leaders have been quoted in the local press as arguing that OAZ should destroy the future of Zwovka, indicating that OAZ should not abstain from targeting children, if such is the need of the hour. In early 2005, a team of investigative journalists from the Zwovka Times carried out an investigation and published a report on the OAZ. The report described the OAZ as a “rag-tag militia of megalomaniacs who may have sympathizers but not resources to put their deviant goals into practice”.



- 13) In December 11, 2011, the newspaper, Heritage of Zwovka (“**Heritage**”), published an article titled “OAZ targets our children”. In the article, the Heritage quoted anonymous intelligent sources as suggesting that OAZ was directing its members and sympathizers in the toy industry to coat toys exported to Enroda with extra levels of lead based paint. The Heritage is given a score of 35 on a possible scale of 100 by MEDIAWATCH, a media watchdog, for accurate reporting. All other newspapers in Zwovka have a score above 65.
- 14) Between the periods of December to January, 2012, the customs officials in Zwovka carried out random checks on import of toys from Enroda. Of the ten sample consignments examined, three were found to have lead content of 600 ppm while the rest had lead content of between 150 to 300 ppm.
- 15) On May 5, 2012, the Zwovka Parliament passed the Environment and Security of Children Act (“**ESC Act**”). Extracts from the ESC Act are reproduced below:

PART 1

SECTION 1

The Act applies to the following toys falling under Zwovkan Tariff Code Heading 9503 imported into Zwovka:

Tricycles, scooters, pedal cars and similar wheeled toys

SECTION 2

The Act prohibits the import of all toys, as defined in Section 1 with a lead content of more than 100 ppm.

SECTION 3

The Act, based on intelligence reports received by the Executive, over which the Parliament recognizes the right of the Executive to exercise privilege, restricts the import of all toys defined in Section 1 for an interim period of 12 months from Enroda. This is an emergency action which will be withdrawn upon the subjective satisfaction of the Executive that intelligence reports of possible threat to the citizens of Zwovka from the OAZ are inaccurate. The interim period of 12 months may be extended if considered absolutely necessary.



TERMS OF DISPUTE

Zwovka and Enroda are members of the World Trade Organization (“WTO”) and the World Customs Organization.

Enroda requested for mandatory consultations with Zwovka as required under the WTO Dispute Settlement Understanding (“DSU”) with respect to the enactment and enforcement of the Zwovka Environment & Security of Children Act. After the consultations failed, Enroda requested for the formation of a panel under Article 6 of the DSU.

Enroda has raised a claim for violation of the following provisions:

GATT: Article III, XI

WTO TBT: Article 2.1, 2.2



NOTE 1: The complainant will retain the discretion to not pursue a particular claim before the WTO panel. Participants will not be penalized for dropping a claim so long as they are in a position to justify their position in oral arguments. The following provisions will also be applicable in the dispute and participants representing Enroda and Zwovka should, if they deem fit, make arguments on the below mentioned provisions of the WTO Agreements:

GATT: Article XX, XXI

WTO TBT: Preamble

NOTE 2: Zwovka will not reveal any detail pertaining to any intelligence it possesses relevant to the subject matter of the dispute to either Enroda or the WTO Panel.

CASES FOR REFERENCE:

1. Brazil-Retreaded Tyres, WT/DS 332
2. Dominic Republic-Cigarettes WT/DS 302
3. EC-Asbestos WT/DS 135
4. EC-Sardines WT/DS 231
5. Indonesia-Autos WT/DS 54
6. Japan-Alcoholic Beverages WT/DS 8
7. US - Clove Cigarettes WT/DS 406
8. US -Tuna Dolphin II WT/DS 381
9. US-Gasoline WT/DS 2
10. US-Shrimp Turtle WT/DS 58

NOTE 3: The referred cases are intended to provide for a better understanding of the issues in this case. It is quite possible that some of these cases may not be directly relevant to the case and participants will not be expected to use all these cases in their written briefs or oral arguments. Also, participants may find cases other than those indicated to be relevant.