

1 RULE 18: DOCUMENTS..... 1

1.1 Text of Rule 18 1

1.2 Rule 18(1): failure to file document by the specified deadline..... 1

1.3 Rule 18(5): clerical errors..... 3

1 RULE 18: DOCUMENTS

1.1 Text of Rule 18

Documents

18. (1) No document is considered filed with the Appellate Body unless the document is received by the Secretariat within the time-period set out for filing in accordance with these Rules.

Official versions of documents shall be submitted in paper form to the Appellate Body Secretariat by 17:00 Geneva time on the day that the document is due. Participants, parties, third participants and third parties shall, by the same deadline, also provide to the Appellate Body Secretariat an electronic copy of each document. Such electronic copy may be sent via electronic mail to the Appellate Body Secretariat's electronic mail address, or brought to the Appellate Body Secretariat on a data storage device such as a CD-ROM or USB flash drive.

(2) Except as otherwise provided in these Rules, every document filed by a party to the dispute, a participant, a third party or a third participant shall on the same day be served on each of the other parties to the dispute, participants, third parties and third participants in the appeal, in accordance with paragraph 4.

(3) A proof of service on the other parties to the dispute, participants, third parties and third participants shall appear on, or be affixed to, each document filed with the Secretariat under paragraph 1 above.

(4) A document shall be served by the most expeditious means of delivery or communication available, including by:

(a) delivering a copy of the document to the service address of the party to the dispute, participant, third party or third participant; or

(b) sending a copy of the document to the service address of the party to the dispute, participant, third party or third participant by facsimile transmission, expedited delivery courier or expedited mail service.

Electronic copies of documents served shall also be provided on the same day, either by electronic mail, or through physical delivery of a data storage device containing an electronic copy of the document.

(5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its documents (including typographical mistakes, errors of grammar, or words or numbers placed in the wrong order). The request to correct clerical errors shall identify the specific errors to be corrected and shall be filed with the Secretariat no later than 30 days after the date of the filing of the Notice of Appeal. A copy of the request shall be served upon the other parties to the dispute, participants, third parties and third participants, each of whom shall be given an opportunity to comment in writing on the request. The division shall notify the parties to the dispute, participants, third parties and third participants of its decision.

1.2 Rule 18(1): failure to file document by the specified deadline

1. In *US – Upland Cotton*, the Appellate Body noted, without further discussion, that:

"In a letter dated 1 November 2004, Brazil, without requesting action by the Appellate Body, drew attention to the failure by the United States to submit its appellant's submission in a timely fashion. Brazil observed that the United States' appellant's submission was submitted on 28 October 2004 after the deadline of 5:00 p.m. that had been established by the Division in the *Working Schedule* issued pursuant to Rule 26 of the *Working Procedures*."¹

2. In *US – Stainless Steel (Mexico)*, the European Communities complained that the United States' appellee's submission was submitted almost three hours after the time-limit set out by the Appellate Body in the Working Schedule for this appeal. The European Communities submitted that the United States "had significant time to examine the filings of the Third Participants and eventually adjust its own submission prior to filing." At the oral hearing, the European Communities reiterated its request that the Appellate Body clarify whether it considers the United States' appellee's submission to be filed within the meaning of Rule 18(1) of the Working Procedures, and what the consequences are, if any, of a late filing. The Appellate Body responded:

"We share the concerns raised by the European Communities. Compliance with established time periods by all participants regarding the filing of submissions is an important element of due process of law. The Appellate Body clarified in *India – Patents (US)* that due process requirements are implicit in the DSU. This is particularly important, given that, according to Rules 22(1) and 24(1) of the *Working Procedures*, the appellee's submission(s) and the third participant's submission(s) are filed contemporaneously. The late filing of a participant's submission could have implications for the other participants. Compliance with the procedural requirements relating to the timely filing of submissions is a matter of fairness and orderly procedure, which are referred to in Rule 16(1) of the *Working Procedures*. In the circumstances of this appeal, we nevertheless consider the United States' appellee's submission as filed."²

3. In *US/Canada – Continued Suspension*, the European Communities sent a letter to the Appellate Body Secretariat noting that the United States and Canada had filed their appellee's submissions after the 5:00 p.m. time-limit set out by the Division in the Working Schedule drawn up for these appeals. The European Communities referred to Rule 18(1) of the Working Procedures and requested that the Division "inform the parties of the treatment that should be accorded to these documents". The United States and Canada responded in separate letters and requested the Division to reject the European Communities' request. At the oral hearing, the Division ruled on the European Communities' request regarding the late filing of the appellee's submission by the United States and Canada.

"The Division emphasized the importance of all participants adhering strictly to the time-limits set out in the Working Schedule, given the time constraints imposed upon both the participants and the Appellate Body Members in these proceedings. It also noted that the failure to strictly observe such time-limits can have an impact upon the fairness and the orderly conduct of the proceedings. However, having thoroughly examined the matter, and in the light of the particular time-limits concerned and potential prejudice that might be involved, the Division decided nevertheless to consider the appellees' submissions filed by the United States and Canada."³

4. In *Australia – Apples*, the Appellate Body decided not to accept the executive summary of the United States' third party submission because it was filed two days after the deadline.⁴

5. In *US – Anti-Dumping and Countervailing Duties (China)*, the Appellate Body decided not to accept the executive summary of Argentina's third participant's submission because it was filed one day after the deadline.⁵ However, the Appellate Body did accept another third participant's written submission notwithstanding that it was filed after the 17:00 deadline. In this regard, the Appellate Body noted that:

¹ Appellate Body Report, *US – Upland Cotton*, fn 19.

² Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 164.

³ Appellate Body Reports, *US/Canada – Continued Suspension*, para. 30.

⁴ Appellate Body Report, *Australia – Apples*, footnote 40.

⁵ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, fn 33.

"Turkey's third participant's submission was not received before the 17:00 deadline specified in Rule 18(1) of the *Working Procedures*. While we are cognizant of the fact that this is the first appeal filed following recent amendments to the *Working Procedures*, including to Rule 18(1), we nevertheless wish to emphasize strongly the importance of timely filing of documents in appeals."⁶

6. In *Thailand – Cigarettes (Philippines)*, the Appellate Body noted that:

"Although the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu indicated that its notification was made pursuant to Rule 24(2) of the *Working Procedures*, the notification was not received before the 17:00 deadline specified in Rule 18(1) of the *Working Procedures*. Accordingly, the Division treated it as a notification and request to make an oral statement at the hearing made pursuant to Rule 24(4) of the *Working Procedures*."⁷

1.3 Rule 18(5): clerical errors

7. The Appellate Body has granted requests to correct clerical errors pursuant to Rule 18(5) in a number of proceedings to date.⁸

8. In *Mexico – Taxes on Soft Drinks*, Mexico requested authorization to correct certain clerical errors in its appellant's submission pursuant to Rule 18(5). The Appellate Body explained that:

"By letter dated 16 January 2006, the Division authorized Mexico to correct the clerical errors in its appellant's submission but emphasized, however, that it had not been requested, and did not make, a finding 'as to whether all of the corrections requested by Mexico are 'clerical' within the meaning of Rule 18(5) of the *Working Procedures*'."⁹

9. In *US – Softwood Lumber VI (Article 21.5 – Canada)*, Canada requested authorization to correct certain clerical errors in its appellant's submission after the deadline for such requests had passed. The Division decided to grant the request because "the correct information was, in any event, set forth in one of the exhibits submitted by Canada to the Panel; the matter had been discussed at the oral hearing; and the United States did not object to the request".¹⁰

Current as of: December 2020

⁶ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, footnote 35.

⁷ Appellate Body Report, *Thailand – Cigarettes (Philippines)*, footnote 18.

⁸ See e.g. Appellate Body Reports, *Mexico – Taxes on Soft Drinks*, para. 7; *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 15; *EC – Selected Customs Matters*, para. 13; *US – Zeroing (Japan)*, para. 5; *Japan – DRAMs (Korea)*, para. 12; *US – Stainless Steel (Mexico)*, para. 5; *US – Shrimp (Thailand) / US – Customs Bond Directive*, para. 20; *China – Auto Parts*, para. 9.

⁹ Appellate Body Report, *Mexico – Taxes on Soft Drinks*, para. 7.

¹⁰ Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 15.