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**1 RULE 18**

**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 2005 Amendment of Rule 18(5)

1. Rule 18(5) of the original Working Procedures provided that "[u]pon authorization by the division, a participant or a third participant may correct clerical errors in any of its submissions. Such correction shall be made within 3 days of the filing of the original submission and a copy of the revised version shall be filed with the Secretariat and served upon the other participants and third participants." Rule 18(5) was subsequently amended (the amendment took effect 1 January 2005). In a communication to the DSB Chairman dated 8 April 2004, the Appellate Body explained the reasons for doing so:

"Members have occasionally had recourse to this provision over the last eight years. Their practice in this regard has demonstrated to us that: (i) the meaning of the word "clerical" is not always clear; and (ii) the 3-day requirement is too inflexible.

Accordingly, we are considering amending Rule 18(5) of the *Working Procedures* to eliminate the three-day time limit and to replace the word "clerical" with "minor". We also propose to add, in parentheses, an illustrative, though not exhaustive, list of what could constitute a "minor" error: for example, typographical errors, errors in syntax, or words or numbers in the wrong order.

Authorization to amend pursuant to this provision will be made on a case-by-case basis. It is also our intention, whenever a request is made pursuant to Rule 18(5), to afford all participants and third participants in the appeal an opportunity to comment upon the request."<sup>1</sup>

2. In a communication to the DSB Chairman dated 7 October 2004 explaining the final version of the amendment to Rule 18(5), the Appellate Body explained that:

"A number of Members voiced a preference to retain the term "clerical" in Rule 18(5), regarding the correction of certain errors in submissions and other documents. Consistent with the concerns expressed, we have, in the final version of the amendments, decided to retain the term "clerical", while adding an illustrative list of the types of errors subject to the rule. We have also taken into account the preference expressed by certain Members for the maintenance of a deadline for correction of clerical errors. However, in the light of the non-substantial nature of amendments covered by this rule, and to allow for the possibility that participants may become aware of clerical errors only upon the filing of written submissions by *other* participants, we have chosen to provide a generous deadline, viz. 30 days following the filing of the Notice of Appeal, or, roughly five days following receipt of the last of the written pleadings. We note that, in any event, a Member's ability to correct clerical errors will be contingent upon the receipt of authorization from the Division hearing the appeal."<sup>2</sup>

## 1.3 2010 Amendments of Rules 18(1), 18(2), and 18(4) to allow for electronic filing and service of electronic documents

3. In 2010, the Appellate Body made amendments to paragraphs 1, 2, and 4 of Rule 18 to include filing and service of electronic documents.<sup>3</sup> In a communication to the DSB Chairman dated 27 of July 2010, the Appellate Body explained that these amendments were motivated by the "conviction that the increased use of electronic means represents the future of WTO dispute settlement insofar as the filing of documents is concerned".<sup>4</sup>

4. The Appellate Body further noted that these changes were made to reflect current practice until the WTO concludes the creation of a secure digital dispute settlement registry:

"In making this proposal, we intended it to serve only as a first step toward the establishment of a more reliable, electronic-based system, and to recognize that

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<sup>1</sup> WT/AB/WP/W/8, p. 6.

<sup>2</sup> WT/AB/WP/W/8, p. 6.

<sup>3</sup> WT/AB/WP/6; WT/AB/WP/W/11, pp. 6-7.

<sup>4</sup> WT/AB/WP/W/11, p. 6.

Members participating in appeals currently make use of electronic mail. We are aware that putting a dedicated electronic server system in place would be preferable, recognize modern technological realities, accord with trends in domestic and international tribunals, and allow for reduced dependence on paper. Indeed, funds have already been allocated for the creation of a digital dispute settlement registry within the WTO Secretariat as a whole and this project—which will include the Appellate Body—is underway, albeit still in an early stage. We welcome this initiative and Members' support of it, and will work with others within the WTO Secretariat on the design and implementation of the project."<sup>5</sup>

5. In Rule 18(1), the following paragraph was added:

"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."<sup>6</sup>

6. In a communication to the DSB Chairman dated 27 of July 2010, the Appellate Body explained the current practice motivating this change:

"[T]he sending of electronic copies of documents by e-mail has become the norm in appeals in recent years. Typically, participants and third participants send an electronic version of their documents to the e-mail address of the Appellate Body Secretariat on the day the documents are due, followed by delivery of the paper copies to the Appellate Body Secretariat on the same day. Other parties/participants and third parties/third participants are copied on the e-mail sent to the Appellate Body Secretariat and are served the paper copies on the same day. We note that many Members expressed the view that, for now, it should be the delivery of the paper copies that determines whether or not the filing requirements set out in Rule 18 have been complied with. At the same time, we understand that Members benefit from the practical utility of obtaining a supplementary, electronic copy of documents filed in paper form. Similarly, it is extremely useful for the Appellate Body to have access to electronic versions of documents."

7. In the same communication, the Appellate Body noted the reason for including different means of electronic delivery:

"The electronic copy could be delivered either by e-mail or, for example in cases where Members have concerns about the security of e-mail transmissions, through delivery of a data storage device—such as a CD-ROM or USB flash drive—containing the electronic copy."<sup>7</sup>

8. In Rule 18(2), the Appellate Body added that every document filed by a party to the dispute, a participant, a third party or a third participant shall be served on each of the other parties to the dispute, participants, third parties and third participants in the appeal "on the same day" and "in accordance with paragraph 4".<sup>8</sup>

9. In Rule 18(4), the following paragraph was added:

"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."<sup>9</sup>

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<sup>5</sup> WT/AB/WP/W/11, p. 6.

<sup>6</sup> WT/AB/WP/6.

<sup>7</sup> WT/AB/WP/W/11, p. 6.

<sup>8</sup> WT/AB/WP/6.

<sup>9</sup> WT/AB/WP/6.

10. With regard to the inclusion of the number of paper copies to be submitted per appeal, the Appellate Body indicated that it did not consider it practical to prescribe a specific number of copies in the *Working Procedures* since "the number of paper copies to be submitted to the Appellate Body Secretariat in a given appeal will vary and may diminish following the implementation of the digital dispute settlement registry".<sup>10</sup>

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Current as of: January 2018

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<sup>10</sup> WT/AB/WP/W/11, pp. 6-7.