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**1 RULE 23**

**1.1 Text of Rule 23**

***Multiple Appeals***

23. (1) Within 5 days after the date of the filing of the Notice of Appeal, a party to the dispute other than the original appellant may join in that appeal or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel. That party shall notify the DSB in writing of its appeal and shall simultaneously file a Notice of Other Appeal with the Secretariat.
- (2) A Notice of Other Appeal shall include the following information:
- (a) the title of the panel report under appeal;
  - (b) the name of the party to the dispute filing the Notice of Other Appeal;
  - (c) the service address, telephone and facsimile numbers of the party to the dispute; and either
    - (i) a statement of the issues raised on appeal by another participant with which the party joins; or
    - (ii) a brief statement of the nature of the other appeal, including:
      - (A) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
      - (B) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
      - (C) without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.
- (3) The other appellant shall, within 5 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 of Rule 21 and serve a copy of the submission on the other parties to the dispute and third parties.
- (4) The appellant, any appellee and any other party to the dispute that wishes to respond to a submission filed pursuant to paragraph 3 may file a written submission within 18 days after the date of the filing of the Notice of Appeal, and any such submission shall be in the format required by paragraph 2 of Rule 22.
- (5) This Rule does not preclude a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule from exercising its right of appeal pursuant to paragraph 4 of Article 16 of the DSU.

- (6) Where a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule exercises its right to appeal as set out in paragraph 5, a single division shall examine the appeals.

## 1.2 General

1. In a 7 February 1996 communication from the Appellate Body to the Chairman of the DSB explaining some of the rules in the Working Procedures, the Appellate Body offered the following explanation of Rule 23(1), 23(5) and 23(6) and the procedure for cases involving multiple appellants:

"Fully cognizant of the fact that many panel disputes involve multiple parties, we have provided for a special procedure whereby multiple appellants can be heard fully within the timeframe of the original appeal and by the same division. Because of the time limits provided by Article 17(5) of the DSU for the appeal proceedings, multiple appeals can only be grouped in one single procedure if they are brought within a few days after the initiation of the first appeal. Rule 23(1) of the Working Procedures for Appellate Review specifies this period. Additional appeals which are brought later may not be grouped with the first appeal. They shall, however, be examined by the same division which is responsible for the first appeal. We believe that this is also necessary to ensure maximum coherence and consistency in our decision-making."<sup>1</sup>

## 1.3 2005 Amendment of the Working Procedures to create the "Notice of Other Appeal" requirement

2. The original Working Procedures did not provide for an other appellant to file a Notice of Other Appeal. Rather, an "other appeal" was commenced simply by filing an other appellant's submission on day 15 of the appeal (the time-period under the original Working Procedures). At no point would the other appellant give formal notice of the nature of the other appeal. Rule 23 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:

"The requirement of a Notice of Appeal for the original appeal but not for an other appeal now seems to us to be anomalous. As noted above, a Notice of Appeal enables the appellee to exercise its right of defence effectively. Yet other participants (in particular the original appellant) must also be entitled to the same opportunity where there is an other appeal.

Further, we believe that the absence of a Notice of Other Appeal can create a risk of confusion as to the scope of the other appeal. This is because, under the present rules, an other appellant is not required to identify, in a concise manner, the scope of its appeal, and such scope may not always be clear from the arguments contained in the other appellant's submission.

We, therefore, propose that the *Working Procedures* be modified to include a requirement for the other appellant to file a Notice of Other Appeal. The rules on the content of this Notice would be the same as those applicable to the Notice of Appeal. We also consider that, like the original Notice of Appeal, the Notice of Other Appeal should be filed simultaneously with the Appellate Body Secretariat and the DSB, so that Members would receive notice of both appeals."<sup>2</sup>

3. In a communication to the DSB Chairman dated 7 October 2004 explaining the final version of the amendment to Rule 23, the Appellate Body explained that:

"For the reasons given in my letter of 8 April, we have decided to introduce a Notice of Other Appeal into the appellate process. Accordingly, we are adopting amendments to Rules 1 (definitions), 21 (timing for filing appellant's submission), and 23 (timing

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<sup>1</sup> (footnote original) WT/AB/WP/W/1, p. 3.

<sup>2</sup> WT/AB/WP/W/8, p. 4.

and contents of Notice of Appeal and other appellant's submission) that are largely consistent with the terms of the original draft amendment, and which require an other appellant to notify the DSB of its other appeal and to file a Notice of Other Appeal within 12 days of the filing of the original Notice of Appeal. It has, however, been necessary to adjust the initial draft to ensure symmetry between the requirements for the Notice of Other Appeal and the revised requirements for the Notice of Appeal, as identified above<sup>3</sup>, and to otherwise simplify the amended rule. In addition to these adjustments, and as proposed, the deadline for the filing of the appellant's submission will be changed to 7 days after the filing of the original Notice of Appeal (as opposed to the current 10-day deadline). We have also taken the opportunity to refine the definition of the term "documents" in Rule 1, in order to clarify that the submissions and other written statements of third participants are included within the scope of this definition."<sup>4</sup>

#### **1.4 2010 Amendments of Rules 21(1), 23(1) and 23(3) to modify deadlines for Appellant's Submission, the Notice of Other Appeal, and the Other Appellant's Submission**

4. In 2010, the Appellate Body amended Rules 23(1) and 23(3) to provide that the Notice of Other Appeal and the other appellant's submission will be due 5 days after the filing of the Notice of Appeal.<sup>5</sup> The previous version of the Working Procedures stated that the Notice of Other Appeal was due within 12 days after the filing of the Notice of Appeal and the other appellant's submission was due within 15 days after the filing of the Notice of Appeal.<sup>6</sup>

5. At the same time, the Appellate Body amended Rule 21(1) to provide that the appellant's submission will be due on the same day as the filing of the Notice of Appeal.<sup>7</sup> In a communication to the DSB Chairman dated 27 of July 2010, the Appellate Body explained their reasons for these changes:

"In proposing these modifications to the *Working Procedures*, we considered that the relatively long period between the date on which parties are made aware of the content of panel reports and the time during which an appeal can be filed affords potential appellants and other appellants adequate preparation time, including time to draft relevant Notices and submissions. We further took the view that the 7- and 3-day periods that exist under the current *Working Procedures* could be more valuable, during an appeal, if they could be used by the Appellate Body and all Members participating in the appeal to prepare for the oral hearing, *inter alia*, on the basis of an analysis of the contents of all the written submissions in support of the appeal. While some WTO Members did not share our view that the time between the release of a panel report to the parties and the initiation of an appeal makes it appropriate to advance certain deadlines within the 90-day appeal period, many WTO Members recognized that doing so will allow for a more efficient allocation of the limited time available during an appeal."<sup>8</sup>

#### **1.5 2010 Amendment of Rules 22(1) and 23(4) to modify the deadline for the Appellee's Submission**

6. In 2010, the Appellate Body amended Rule 23(4) to provide that an appellee's submission will be due 18 days after the filing of the Notice of Appeal.<sup>9</sup> The previous version of the Working

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<sup>3</sup>(*footnote original*) Thus, we have used the word "identification" (rather than "description") of the "alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel" in Rule 23(2)(c)(ii)(A), and added the qualifying phrase "without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of the appeal" to the beginning of Rule 23(2)(c)(ii)(C).

<sup>4</sup> WT/AB/WP/W/9, p. 5.

<sup>5</sup> WT/AB/WP/6; WT/AB/WP/W/11, p. 3.

<sup>6</sup> WT/AB/WP/5.

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

<sup>8</sup> WT/AB/WP/W/11, p. 3.

<sup>9</sup> WT/AB/WP/6; WT/AB/WP/W/11, p. 4.

Procedures stated that an appellee's submission was due within 25 days after the filing of the Notice of Appeal.<sup>10</sup>

7. At the same time, the Appellate Body amended Rule 22(1) to provide the same length of time.<sup>11</sup> In a communication to the DSB Chairman dated 27 of July 2010, the Appellate Body explained that it had originally proposed a 15-day period for both Rules but modified it to a 18-day period due to the preferences of the Members:

"In proposing that the appellee's submission be due 15 days after the filing of the Notice of Appeal and the appellant's submission, we sought to reduce the imbalance resulting from the fact that—currently—the appellee's submission is due 18 days after the filing of the appellant's submission, whereas the "other" appellee's submission is due 10 days after the filing of the other appellant's submission.

We recognize, nonetheless, the concerns expressed by many Members that, under our proposal, the interval between the appellant's submission and the appellee's submission would be reduced from 18 days to 15 days. These Members also stressed that the appellee needs sufficient time to respond to the appellant's submission. Taking account of the expressed preference that there be no reduction in the time period between the filing of the appellant's submission and the filing of the appellee's submission, and conscious of our overall objective of enhancing the efficient use of the limited time available in appellate proceedings for all participants, we have decided to maintain the current 18-day interval between these two deadlines."<sup>12</sup>

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Current as of: January 2018

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<sup>10</sup> WT/AB/WP/5.

<sup>11</sup> WT/AB/WP/6; WT/AB/WP/W/11, pp. 3-4.

<sup>12</sup> WT/AB/WP/W/11, pp. 3-4.