

1 RULE 24: THIRD PARTICIPANTS..... 1
 1.1 Text of Rule 24 1
 1.2 Role of third participants in appellate proceedings 1

1 RULE 24: THIRD PARTICIPANTS

1.1 Text of Rule 24

Third Participants

24. (1) Any third party may file a written submission containing the grounds and legal arguments in support of its position. Such submission shall be filed within 21 days after the date of the filing of the Notice of Appeal.

(2) A third party not filing a written submission shall, within the same period of 21 days, notify the Secretariat in writing if it intends to appear at the oral hearing, and, if so, whether it intends to make an oral statement.

(3) Third participants are encouraged to file written submissions to facilitate their positions being taken fully into account by the division hearing the appeal and in order that participants and other third participants will have notice of positions to be taken at the oral hearing.

(4) Any third party that has neither filed a written submission pursuant to paragraph (1), nor notified the Secretariat pursuant to paragraph (2), may notify the Secretariat that it intends to appear at the oral hearing, and may request to make an oral statement at the hearing. Such notifications and requests should be notified to the Secretariat in writing at the earliest opportunity.

1.2 Role of third participants in appellate proceedings

1. In *US/Canada – Continued Suspension*, the Appellate Body granted a request by the participants to allow public observation of the oral hearing. Some of the third participants argued that the Appellate Body was constrained by Article 17.10 of the DSU in its power to authorize the lifting of confidentiality. In that context, the Appellate Body made a number of observations on the role of third participants in appellate proceedings:

"The Appellate Body has fostered the active participation of third parties in the appellate process in drawing up the *Working Procedures* and in appeal practice. Article 17.4 provides that third participants 'may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.' In its *Working Procedures*, the Appellate Body has given full effect to this right by providing for participation of third participants during the entirety of the oral hearing, while third parties meet with panels only in a separate session at the first substantive meeting. Third participants, however, are not the main parties to a dispute. Rather, they have a systemic interest in the interpretation of the provisions of the covered agreements that may be at issue in an appeal. Although their views on the questions of legal interpretation that come before the Appellate Body are always valuable and thoroughly considered, these issues of legal interpretation are not inherently confidential. Nor is it a matter for the third participants to determine how the protection of confidentiality in the relationship between the participants and the Appellate Body is best dealt with. In order to sustain their objections to public observation of the oral hearing, third participants would have to identify a specific interest in their relationship with the Appellate Body that would be adversely affected if we were to authorize the participants' request—in this case, we can discern no such interests."¹

Current as of: June 2023

¹ Appellate Body Reports, *US/Canada – Continued Suspension*, Annex IV, para. 9.