

<b>1 RULE 24</b> .....	<b>1</b>
1.1 Text of Rule 24 .....	1
1.2 2003 Amendment of Rule 24 and Rule 27(3) to allow for "passive participation".....	1
1.3 2010 Amendments of Rules 24(1) and 24(2) to modify deadlines .....	2

## **1 RULE 24**

### **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 2003 Amendment of Rule 24 and Rule 27(3) to allow for "passive participation"**

1. Rule 24 of the Working Procedures originally provided that "[a]ny third party *may file a written submission*, stating its intention to participate as a third participant in the appeal and containing the grounds and legal arguments in support of its position, within 25 days after the date of the filing of the Notice of Appeal".<sup>1</sup> Rule 27(3) of the Working Procedures originally provided that "[a]ny third participant *who has filed a submission pursuant to Rule 24* may appear to make oral arguments or presentations at the oral hearing".<sup>2</sup>
2. The Appellate Body subsequently amended Rule 24 and Rule 27(3) (the amendment took effect 1 May 2003). The Appellate Body explained the reasons behind the amendments in a communication dated 19 December 2002:

"The experience of the first six years of operation of the Appellate Body revealed an unintended rigidity in the *Working Procedures* with respect to the rules relating to third party participation in the oral hearing. Specifically, the *Working Procedures* did not contemplate participation in the oral hearing by third parties that had not filed a written submission within 25 days of the filing of the Notice of Appeal. Many Members expressed the view that the opportunity to attend the oral hearing and be heard by the Appellate Body should not depend on the filing of a written submission. The Appellate Body's practice of allowing "passive participation" at oral hearings went some way towards meeting these concerns, although certain Members felt that more flexibility was desirable.

The issue of third party participation in the oral hearing arose regularly in appeals in recent years, and several Members continued to press for elimination of the rule

<sup>1</sup> WT/AB/WP/1, Rule 24 (emphasis added).

<sup>2</sup> WT/AB/WP/1, Rule 27(3) (emphasis added).

requiring the filing of a written submission. We agreed with Members that a more flexible approach was desirable and sought to respond to Members' requests for change with specifically targeted amendments to Rules 1, 24 and 27 of the *Working Procedures*.<sup>3</sup>

### 1.3 2010 Amendments of Rules 24(1) and 24(2) to modify deadlines

3. In 2010, the Appellate Body amended Rules 24(1) and 24(2) to provide that that third participants' submissions and notifications will be due 21 days after the filing of the Notice of Appeal, that is, 3 days after the deadline for the filing of the appellee's submission.<sup>4</sup> Originally, the Rules provided that third participants' submissions and notifications were due within 25 days after the filing of the Notice of Appeal.<sup>5</sup>

4. In a communication to the DSB Chairman dated 27 of July 2010, the Appellate Body explained its reasons for this change:

"We ... proposed that third participants' submissions and notifications would be due on a day separate from, and 3 days subsequent to, the filing date for the appellee's submission. This would enable third participants to respond in their written submissions to the appellee's submission, as well as to the appellant's and the other appellant's submissions. This should also assist participants in their preparations for the oral hearing because, when third participants file written submissions, participants would have earlier notice of the third participants' comments on the positions of all participants' written submissions. We agree with the observation made by several Members that such a staggered deadline could contribute to a more efficient oral hearing. Some Members suggested that, in order to afford third participants sufficient time to react to the content of the appellee's submission, the interval between the deadline for the filing of the appellee's submission and the deadline for the third participants' submissions should be longer than 3 days. Yet, in light of the highly compressed appeal schedule, we do not believe that affording third participants a longer period of time would be compatible with our objective of modifying the appeal timetable so as to achieve the most efficient allocation of the limited time available in a way that affords all participants and third participants, as well as the Appellate Body, more time to properly reflect upon and take account of written submissions in preparation for the oral hearing.

We wish to assure Members that this amendment will not result in any reduced opportunity for third participants to make oral statements and respond to questions at the oral hearing. At the same time, we wish to recall the provisions of Rule 24(3), which encourage third participants to file written submissions to facilitate their positions being taken fully into account."

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<sup>3</sup> WT/AB/WP/W/6, p. 1.

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

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