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**1 RULE 27: ORAL HEARING**

**1.1 Text of Rule 27**

***Oral Hearing***

27. (1) A division shall hold an oral hearing, which shall be held, as a general rule, between 30 and 45 days after the date of the filing of a Notice of Appeal.

(2) Where possible in the working schedule or otherwise at the earliest possible date, the Secretariat shall notify all parties to the dispute, participants, third parties and third participants of the date for the oral hearing.

(3) (a) Any third party that has filed a submission pursuant to Rule 24(1), or has notified the Secretariat pursuant to Rule 24(2) that it intends to appear at the oral hearing, may appear at the oral hearing, make an oral statement at the hearing, and respond to questions posed by the division.

(b) Any third party that has notified the Secretariat pursuant to Rule 24(4) that it intends to appear at the oral hearing may appear at the oral hearing.

(c) Any third party that has made a request pursuant to Rule 24(4) may, at the discretion of the division hearing the appeal, taking into account the requirements of due process, make an oral statement at the hearing, and respond to questions posed by the division.

(4) The Presiding Member may set time-limits for oral arguments.

**1.2 Authority to organize and conduct oral hearings**

1. In *US/Canada – Continued Suspension*, the Appellate Body granted a request by the participants to allow public observation of the oral hearing. In that context, the Appellate Body stated:

"We note that the DSU does not specifically provide for an oral hearing at the appellate stage. The oral hearing was instituted by the Appellate Body in its *Working Procedures*, which were drawn up pursuant to Article 17.9 of the DSU. The conduct and organization of the oral hearing falls within the authority of the Appellate Body (*compétence de la compétence*) pursuant to Rule 27 of the *Working Procedures*. Thus, the Appellate Body has the power to exercise control over the conduct of the oral hearing ..."<sup>1</sup>

2. In *Russia – Railway Equipment*, the Appellate Body granted a request to extend the time limits of the participants' opening statements. Specifically, the Appellate Body stated:

"On 13 September 2019, the Appellate Body received a communication from Ukraine requesting that the Division extend the time limits for opening statements at the oral hearing. On the same day, the Division hearing the appeal invited Russia and the third participants to provide any comments on Ukraine's request by 16 September 2019.

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<sup>1</sup> Appellate Body Reports, *US/Canada – Continued Suspension*, Annex IV, para. 7.

Russia expressed support and requested that equal opportunity be provided to both Russia and Ukraine in the event that the Division decided to grant Ukraine's request. No comments were received from the third participants. Having considered Ukraine's request and comments by Russia, the Division informed participants and third participants by letter of 16 September of extended time limits for the participants' opening statements."<sup>2</sup>

### 1.3 Public observation of oral hearings

3. The Appellate Body has authorized public observation of oral hearings in a number of appellate proceedings, upon joint request of the parties. In *EC and certain member States – Large Civil Aircraft*, the Appellate Body recalled that:

"In its rulings, the Appellate Body has held that it has the power to authorize such requests by the participants, provided that this does not affect the confidentiality in the relationship between the third participants and the Appellate Body, or impair the integrity of the appellate process.

The Appellate Body has also noted that public observation in previous cases operated smoothly, and that the rights of third participants who did not wish to have their oral statements made subject to public observation were fully protected."<sup>3</sup>

4. In *EU – Biodiesel (Argentina)*, the European Union requested that the Appellate Body open the hearing to public observation, but Argentina did not join in the request. The Appellate Body declined the EU request, stating:

"We note that the request to open the oral hearing in these proceedings was made by only one of the participants, the European Union. According to Argentina, the European Union did not consult with Argentina or seek to persuade Argentina to make a joint request to allow public observation of the oral hearing. We also take note of the concerns expressed by Argentina regarding the European Union's request, and its preference not to have the oral hearing open to public observation. Moreover, we observe that the request was made merely three weeks prior to the oral hearing."<sup>4</sup>

5. In the same dispute, the European Union additionally requested that third participants be allowed to view a video recording of the oral hearing, including from a location other than Geneva. Specifically, the European Union proposed that a password protected, electronic version of the video recording be made available as soon as practicable upon conclusion of the oral hearing, to which third participants would have access during a limited period of one week. The Appellate Body declined the EU request to enable third participants to view a video recording of the oral hearing, stating that:

"We note that, to date, procedures such as those proposed by the European Union have not been adopted in WTO dispute settlement proceedings. Moreover, although the proposed procedures appear complex, both technically and administratively, the request was made only three weeks before the oral hearing in these proceedings. We further note that, while the European Union indicates that its proposed procedures are for the benefit of third participants, its request has not been expressly supported by any of the third participants in these appellate proceedings."<sup>5</sup>

6. In appeals in which the Appellate Body has authorized public observation of the oral hearing, this has been done by simultaneous transmission to the public in a separate room via closed-circuit television broadcast.<sup>6</sup> Oral statements and responses to questions by third participants wishing to maintain the confidentiality of their submissions were not subject to public

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<sup>2</sup> Appellate Body Report, *Russia – Railway Equipment*, para. 1.9.

<sup>3</sup> Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, Annex IV, paras. 19-20.

<sup>4</sup> Appellate Body Report, *EU – Biodiesel (Argentina)*, Annex D-2, para. 6.

<sup>5</sup> Appellate Body Report, *EU – Biodiesel (Argentina)*, Annex D-2, para. 10.

<sup>6</sup> See, e.g. Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, Annex IV, paras. 19-24.

observation.<sup>7</sup> The following table provides information on Appellate Body hearings opened to the public. In some disputes the entirety of the hearing was open to public observation, whereas in others only a portion of the hearing (e.g. opening oral statements) was opened to public observation.

DS No.	Dispute	Dates	Reference
DS320 DS321	<i>US/Canada – Continued Suspension</i>	28-29 July 2008	Appellate Body Reports, <i>US/Canada – Continued Suspension</i> , para. 32, Annex IV
DS27	<i>EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)</i>	16-17 October 2008	Appellate Body Reports, <i>EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)</i> , para. 28, Annex IV
DS350	<i>US – Continued Zeroing</i>	11-12 December 2008	Appellate Body Report, <i>US – Continued Zeroing</i> , para. 9, Annex III
DS294	<i>US – Zeroing (EC) (Article 21.5 – EC)</i>	23-24 March 2009	Appellate Body Report, <i>US – Zeroing (EC) (Article 21.5 – EC)</i> , para. 14, Annex III
DS322	<i>US – Zeroing (Japan) (Article 21.5 – Japan)</i>	29-30 June 2009	Appellate Body Report, <i>US – Zeroing (Japan) (Article 21.5 – Japan)</i> , para. 18, Annex II
DS367	<i>Australia – Apples</i>	11-12 October 2010	Appellate Body Report, <i>Australia – Apples</i> , para. 9, Annex III
DS316	<i>EC and certain member States – Large Civil Aircraft</i>	11-17 November 9-14 December 2010	Appellate Body Report, <i>EC and certain member States – Large Civil Aircraft</i> , para. 22, Annex IV
DS384 DS386	<i>US – COOL</i>	2-3 May 2012	Appellate Body Report, <i>US – COOL</i> , para. 12, Annex IV
DS412 DS426	<i>Canada – Renewable Energy</i>	14-15 March 2013	Appellate Body Reports, <i>Canada – Renewable Energy / Feed-In Tariff Program</i> , para. 1.29, Annex 4
DS400 DS401	<i>EC – Seal Products</i>	17-19 March 2014	Appellate Body Reports, <i>Canada – Renewable Energy / Feed-In Tariff Program</i> , para. 1.13, Annex 4
DS384 DS386	<i>US – COOL (Article 21.5 – Canada and Mexico)</i>	16-17 February 2015	Appellate Body Reports, <i>US – COOL (Article 21.5 – Canada and Mexico)</i> , para. 1.23, Annex 6
DS487	<i>US – Tax Incentives</i>	6 June 2017	Appellate Body Report, <i>US – Tax Incentives</i> , para. 1.14, Annex D-3
DS505	<i>US – Supercalendered Paper</i>	4-5 November 2019	Appellate Body Report, <i>US – Supercalendered Paper</i> , para. 1.9, Annex D-3

#### 1.4 Multiple sessions / hearings

7. In *EC and certain member States – Large Civil Aircraft*, the oral hearing in this appeal took place in two sessions: the first on 11-17 November, and the second on 9-14 December 2010.<sup>8</sup>

<sup>7</sup> See, e.g. Appellate Body Report, *US – Continued Zeroing*, para. 9.

<sup>8</sup> Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 26.

8. In *US – Large Civil Aircraft (2<sup>nd</sup> complaint)*, the Appellate Body communicated that it would hold the first session of the oral hearing in August 2011, and the second in October 2011.<sup>9</sup>

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Current as of: December 2020

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<sup>9</sup> WT/DS353/11.