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1 RULE 28: WRITTEN RESPONSES

1.1 Text of Rule 28

Written Responses

28. (1) At any time during the appellate proceeding, including, in particular, during the oral hearing, the division may address questions orally or in writing to, or request additional memoranda from, any participant or third participant, and specify the time-periods by which written responses or memoranda shall be received.

(2) Any such questions, responses or memoranda shall be made available to the other participants and third participants in the appeal, who shall be given an opportunity to respond.

(3) When the questions or requests for memoranda are made prior to the oral hearing, then the questions or requests, as well as the responses or memoranda, shall also be made available to the third parties, who shall also be given an opportunity to respond.

1.2 Post-hearing memoranda and responses to questions

1. In *US – Gasoline*, further to the oral hearing, the participants and third participants were invited to provide, and did provide, the Appellate Body and each other with final written statements of their respective positions.¹

2. In *Japan – Alcoholic Beverages II*, the parties answered most of the Appellate Body's questions orally at the hearing. They also answered a number in writing. The Division hearing the appeal gave each participant an opportunity to respond to the written post-hearing memoranda of the other participants.²

3. In *US – Underwear*, the participants and third participant to the oral hearing did not take advantage of an invitation by the Division hearing the appeal to submit post-hearing memoranda. The United States later submitted a written clarification and amplification of its oral response to one of the Division's questions. The next day, Costa Rica responded in writing to the United States' clarification.³

4. In *EC – Poultry*, at the request of the Division hearing the appeal, the participants and third participants submitted written post-hearing memoranda on particular issues relating to the appeal. The participants submitted their respective written replies to these post-hearing memoranda.⁴

¹ Appellate Body Report, *US – Gasoline*, p. 3.
² Appellate Body Report, *Japan – Alcoholic Beverages II*, p. 2.
³ Appellate Body Report, *US – Underwear*, p. 5.
⁴ Appellate Body Report, *EC – Poultry*, para. 6.

1.3 Appellate Body requests for additional memoranda / submissions on particular issues

5. In *US – Shrimp*, at the invitation of the Appellate Body, the United States, India, Pakistan, Thailand and Malaysia filed additional submissions on certain issues arising under Article XX(b) and Article XX(g) of the GATT 1994.⁵

6. In *Canada – Patent Term*, at the request of the Appellate Body Division hearing the appeal, the participants submitted additional memoranda on certain issues of legal interpretation arising under Articles 70.1 and 70.2 of the TRIPS Agreement. The Division afforded each participant an opportunity to respond to the additional memoranda submitted by the other participant.⁶

7. In *US – Section 211 Appropriations Act*, the Division hearing the appeal requested that the participants submit additional written memoranda on the interpretation by domestic courts of Article 6*quinquies* of the Paris Convention (1967), or the interpretation by domestic courts of legislation incorporating Article 6*quinquies*. Both participants filed the additional written memoranda and were given an opportunity to respond to these memoranda at the oral hearing.⁷

8. In *US – FSC (Article 21.5 – EC)*, at the oral hearing, the Division requested the United States to submit in writing certain of its responses to questioning. The Division also authorized the European Communities and the third participants, if they wished, to respond in writing by 30 November 2001.⁸

9. In *US – Softwood Lumber IV (Article 21.5 – Canada)*, the Appellate Body Division hearing the appeal requested the United States to submit an additional written memorandum explaining certain aspects of relevant United States laws and procedures. The United States filed an additional written memorandum on 5 October 2005. On 10 October 2005, Canada submitted a written response to the United States' additional written memorandum. The Division allowed the third participants additional time during the presentation of their oral statements at the hearing to respond to these additional memoranda.⁹

10. In *EC and certain member States – Large Civil Aircraft*, at the first session of the hearing, the Division distributed written questions to the participants and third participants in order to clarify certain factual aspects of the Panel's findings concerning the evolution of the European Aeronautic Defence and Space Company NV, and received written responses from the participants at the hearing. In addition, upon the Division's invitation to the participants and third participants, the European Union, the United States, Australia, Brazil, China, and Japan submitted additional memoranda regarding the issues discussed during the first session of the hearing. The European Union, the United States, and Brazil submitted comments on the additional memoranda.¹⁰

11. The Appellate Body also invited the participants and third participants to submit additional written memoranda, and subsequent comments thereon, in *US – Large Civil Aircraft (2nd complaint)*.¹¹

Current as of: December 2020

⁵ Appellate Body Report, *US – Shrimp*, para. 8.

⁶ Appellate Body Report, *Canada – Patent Term*, para. 8.

⁷ Appellate Body Report, *US – Section 211 Appropriations Act*, para. 13.

⁸ Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 11.

⁹ Appellate Body Report, *US – Softwood Lumber IV (Article 21.5 – Canada)*, para. 12.

¹⁰ Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 27.

¹¹ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 33.