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1 RULE 6

1.1 Text of Rule 6

Divisions

6. (1) In accordance with paragraph 1 of Article 17 of the DSU, a division consisting of three Members shall be established to hear and decide an appeal.
- (2) The Members constituting a division shall be selected on the basis of rotation, while taking into account the principles of random selection, unpredictability and opportunity for all Members to serve regardless of their national origin.
- (3) A Member selected pursuant to paragraph 2 to serve on a division shall serve on that division, unless:
- (a) he/she is excused from that division pursuant to Rule 9 or 10;
 - (b) he/she has notified the Chairman and the Presiding Member that he/she is prevented from serving on the division because of illness or other serious reasons pursuant to Rule 12; or
 - (c) he/she has notified his/her intentions to resign pursuant to Rule 14.

1.2 General

1. In a 7 February 1996 communication from the Appellate Body to the Chairman of the DSB explaining some of the Working Procedures, the Appellate Body offered the following explanation of Rule 6 and divisions:

"For the purpose of constituting a division of three Members of the Appellate Body to serve on any one case as required by Article 17(1) of the DSU, the Working Procedures for Appellate Review provide for rotation that takes into account the desirability for random selection of the three Members, unpredictability as to the composition of any division and opportunity for all Members of the Appellate Body to serve regardless of their national origin. The Appellate Body is of the view that to deal with the issue of nationality in any other way would be unnecessary and undesirable: unnecessary in view of the qualifications required for membership in the Appellate Body; undesirable as casting doubts on the capacity of members of the Appellate Body for independence and impartiality in decision-making. There are also some practical considerations that are highly relevant. Were the rules to be cast in a manner that required a Member of the Appellate Body to stand aside in an appeal involving his/her country of origin exclusively for reasons of nationality, this would be likely, in practice, to lead to distortions in the work of the Appellate Body Members. Moreover, appeals involving many parties could arise where it would be impossible to constitute a division. Rule 6 is framed accordingly."¹

¹ WT/AB/WP/W/1, p. 2.

1.3 2010 Amendment of Rule 6(3)

2. In the last amendment to the Working Procedures², two clerical errors in Rule 6(3) were corrected:

"The sub-headings (i), (ii), and (iii) should read (a), (b), and (c) in order to be consistent with the remainder of the *Working Procedures*, and the word "Rules" in existing Rule 6(3)(i) should be singular rather than plural."³

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² WT/AB/WP/6.

³ WT/AB/WP/W/11.