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1.1 Compliance with the Working Procedures

1. In *US – Gasoline*, the United States argued that certain issues were not properly brought before the Appellate Body in accordance with its Working Procedures. The Appellate Body agreed, and stated that it could not "casually disregard" its own Working Procedures:

"[T]o deal with those two issues, under the circumstances of this appeal, would have required the Appellate Body casually to disregard its own *Working Procedures* and to do so in the absence of a compelling reason grounded on, for instance, fundamental fairness or *force majeure*. Venezuela and Brazil could have appealed the Panel's finding and non-finding on the two matters by taking advantage of Rules 23(1) or 23(4) of the *Working Procedures* and thereby placing the Appellate Body in a position to dispose of those issues directly in one and the same appellate proceeding.

... [T]he route ... Brazil and Venezuela chose for addressing the two issues in question is not contemplated by the *Working Procedures*, and therefore, these issues are not properly the subject of this appeal."¹

2. In *US – Stainless Steel (Mexico)*, the Appellate Body emphasized the importance of participants complying with procedural requirements in the Working Procedures:

"Compliance with established time periods by all participants regarding the filing of submissions is an important element of due process of law. The Appellate Body clarified in *India – Patents (US)* that due process requirements are implicit in the DSU. This is particularly important, given that, according to Rules 22(1) and 24(1) of the *Working Procedures*, the appellee's submission(s) and the third participant's submission(s) are filed contemporaneously. The late filing of a participant's submission could have implications for the other participants. Compliance with the procedural requirements relating to the timely filing of submissions is a matter of fairness and orderly procedure, which are referred to in Rule 16(1) of the *Working Procedures*."²

1.2 Interpretation of the Working Procedures

3. In *EC – Sardines*, the Appellate Body stated that its Working Procedures cannot be interpreted in a way that could undermine the effectiveness of the dispute settlement system because they have been drawn up pursuant to the DSU:

"[W]e emphasize that the *Working Procedures* must not be interpreted in a way that could undermine the effectiveness of the dispute settlement system, for they have been drawn up pursuant to the DSU and as a means of ensuring that the dispute settlement mechanism achieves the aim of securing a positive solution to a dispute.³ As we have said:

'The procedural rules of WTO dispute settlement are designed to promote ... the fair, prompt and effective resolution of trade disputes.'⁴

¹ Appellate Body Report, *US – Gasoline*, p. 12.

² Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 164.

³ (footnote original) DSU, Article 3.7.

⁴ (footnote original) Appellate Body Report, *US – FSC, supra*, footnote 20, para. 166.

This obligation to interpret the *Working Procedures* in a way that promotes the effective resolution of disputes is complemented by the obligation of Members, set out in Article 3.10 of the DSU, to 'engage in [dispute settlement] procedures in good faith in an effort to resolve the dispute'. Hence, the right to withdraw an appeal must be exercised subject to these limitations, which are applicable generally to the dispute settlement process."⁵

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⁵ Appellate Body Report, *EC – Sardines*, paras. 139-140.