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1 RULE 20

1.1 Text of Rule 20

Commencement of Appeal

20. (1) An appeal shall be commenced by notification in writing to the DSB in accordance with paragraph 4 of Article 16 of the DSU and simultaneous filing of a Notice of Appeal with the Secretariat.
- (2) A Notice of Appeal shall include the following information:
- (a) the title of the panel report under appeal;
 - (b) the name of the party to the dispute filing the Notice of Appeal;
 - (c) the service address, telephone and facsimile numbers of the party to the dispute; and
 - (d) a brief statement of the nature of the appeal, including:
 - (i) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
 - (ii) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
 - (iii) without prejudice to the ability of the appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

1.2 2005 Amendment of Rule 20(2)(d): "statement of the nature of appeal"

1. Rule 20(2)(d) originally provided that a Notice of Appeal shall include "a brief statement of the nature of the appeal, including the allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel". Rule 20(2)(d) was subsequently amended (the amendment took effect 1 January 2005). In a communication to the DSB Chairman dated 7 October 2004 explaining the final version of the amendment to Rule 20(2)(d), the Appellate Body explained that:

"Having considered the views expressed by Members regarding the contents of the Notice of Appeal, we wish to emphasize that we share the concern implicit in the comments of a number of Members, namely that revision of the *Working Procedures* should serve the interests of due process and orderly procedure and should reduce, rather than enhance, opportunities for procedural disputes on appeal. For the reasons set out in my letter of 8 April, we believe that these objectives would be served by further clarification of what is meant by the requirement in Rule 20(2)(d) that a Notice of Appeal set out a "brief statement of the nature of the appeal". We have, accordingly, adopted changes to this provision similar to those envisaged in our initial draft amendment.

At the same time, we have made certain adjustments to the draft amendment. First, item (i) of subparagraph (d) has been adjusted to specify that what is required is "identification" (rather than "description") of the "alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel". Furthermore, the qualifying phrase "without prejudice to the ability of the appellant to

refer to other paragraphs of the panel report in the context of its appeal" has been added to the beginning of item (iii) of that same subparagraph. This confirms that the list of paragraphs of the panel report to be included in the Notice of Appeal is indicative. We emphasize that this provision is intended to enhance due process and assist the other parties, as well as the Appellate Body, to understand the issues under appeal, and will not prejudice an appellant seeking to refer to other paragraphs in the context of its appeal."¹

1.3 Relationship between the Notice of Appeal and the appellant's submission

2. In 2010, the Appellate Body amended Rules 21(1), 23(1), and 23(3) of its Working Procedures to provide that the appellant's submission will be due on the same day as the filing of the Notice of Appeal, and that the Notice of Other Appeal and the other appellant's submission will be filed together five days after the filing of the Notice of Appeal. In a 27 July 2010 communication to the Chairman of the DSB, the Appellate Body explained why it had decided to not eliminate the Notice of Appeal or the Notice of Other Appeal in the light of these amendments:

"As explained in our proposal, we did not intend or propose to eliminate the Notice of Appeal or the Notice of Other Appeal. We believe that the Notice of Appeal remains necessary because it commences the proceedings before the Appellate Body and, together with a Notice of Other Appeal, serves the important function of demarcating the scope of appellate review in a specific dispute. In addition, since it has become customary for Members to send the Notice of Appeal to the DSB when notifying their decision to appeal pursuant to the provisions of Article 16.4 of the DSU, these Notices also serve an important transparency function in that they notify WTO Members of the commencement of an appeal and inform the Membership as a whole of its nature.

We note that, in the course of their consultations with the DSB Chairman, some Members raised questions about the continuing need for Notices of Appeal and Other Appeal, as well as for Rule 23*bis* regarding the amendment of Notices of Appeal and Other Appeal. The Appellate Body has on several occasions expressed the view that the Notice of Appeal also serves to provide adequate notice to the appellee of the "nature of the appeal" and the "allegations of error", which in turn enables the appellee to exercise fully its rights of defence.² It is true that an appellee will have a better understanding of the nature of the appeal and the allegations of error when a detailed written submission is filed on the same day. Nevertheless, we continue to hold the view that there is significant value, both to Members participating in the appeal and to the Appellate Body, in requiring a concise and precise statement of the errors of law and legal interpretation subject to appeal. Indeed, just such considerations led the Appellate Body to introduce, in 2005, the requirement that the *other* appellant also file a notice of its *other* appeal. In our view, elimination of the existing requirements to provide, in the Notices, a brief statement of the nature of the appeal and other appeal could create a risk of uncertainty as to the precise demarcation of those appeals. This is because the exact scope of an appeal and other appeal may not always be clear from the arguments contained in the appellant's and other appellant's submissions, particularly when such submissions are very lengthy.

We thus have decided to preserve the Notices of Appeal and Other Appeal as documents that define the scope of appeal. It follows that Rule 23*bis*, too, continues to have relevance. With regard to a concern expressed by some Members that retaining these requirements could encourage procedural objections relating to the Notices, with a corresponding loss of precious time during the appeal period, we note that, since the Appellate Body amended Rules 20 and 23 in 2005, procedural disputes regarding the sufficiency of Notices of Appeal have been infrequent."³

¹ WT/AB/WP/W/9, p. 5.

² (footnote original) Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, paras. 95-97; Appellate Body Report, *United States – Import Measures on Certain Products from the European Communities*, para. 62; Appellate Body Report, *United States – Continued Dumping and Subsidy Offset Act of 2000*, para. 200.

³ WT/AB/WP/W/11, pp. 4-5.

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Current as of: January 2018