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1 RULE 30: WITHDRAWAL OF APPEAL

1.1 Text of Rule 30

Withdrawal of Appeal

30. (1) At any time during an appeal, the appellant may withdraw its appeal by notifying the Appellate Body, which shall forthwith notify the DSB.

(2) Where a mutually agreed solution to a dispute which is the subject of an appeal has been notified to the DSB pursuant to paragraph 6 of Article 3 of the DSU, it shall be notified to the Appellate Body.

1.2 Simple withdrawal of entire appeal

1. In *India – Autos*, India withdrew its appeal and did not file a new one.¹

1.3 Withdrawal of "conditional" appeal

2. In *EC and certain member States – Large Civil Aircraft*, the European Union appealed certain findings by the Panel on the condition that the United States appealed certain other findings of the Panel. As the conditions on which these appeals were premised did not arise, the European Union withdrew these conditional appeals pursuant to Rule 30(1) of the Working Procedures.²

1.4 Withdrawal and re-filing of appeal

1.4.1 For scheduling reasons

3. In *US – FSC*, the Appellate Body explained that:

"For scheduling reasons, and pursuant to an agreement it had reached with the European Communities, on 2 November 1999 the United States notified the Chairman of the Appellate Body and the Chairman of the DSB of its decision to withdraw its 28 October 1999 notice of appeal. This withdrawal was made pursuant to Rule 30(1) of the *Working Procedures*, and was conditional upon the right of the United States to file a new notice of appeal pursuant to Rule 20 of the *Working Procedures*. On 26 November 1999, the United States once again notified the DSB of its intention to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, pursuant to paragraph 4 of Article 16 of the DSU, and filed a Notice of Appeal pursuant to Rule 20 of the *Working Procedures*."³

4. Likewise, in *US – Line Pipe*, the Appellate Body explained that:

¹ Appellate Body Report, *India – Autos*, para. 15.

² Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, fn 77.

³ Appellate Body Report, *US – FSC*, para. 4.

"For scheduling reasons, on 13 November 2001, the United States notified the Chairman of the Appellate Body and the Chairman of the DSB of its decision to withdraw the notice of appeal filed on 6 November 2001. The withdrawal was made pursuant to Rule 30(1) of the *Working Procedures*, and was conditional on the right to file a new notice of appeal. On 19 November 2001, the United States again notified the DSB of its intention to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, pursuant to paragraph 4 of Article 16 of the DSU, and filed a new notice of appeal pursuant to Rule 20 of the *Working Procedures*."⁴

5. In *US – Softwood Lumber IV*, the Appellate Body stated that:

"On 3 October 2003, for scheduling reasons, the United States withdrew its Notice of Appeal pursuant to Rule 30 of the *Working Procedures*, conditional on its right to re-file the Notice of Appeal at a later date. On 21 October 2003, the United States re-filed a substantively identical Notice of Appeal pursuant to Rule 20 of the *Working Procedures*."⁵

1.4.2 As a means of amending a Notice of Appeal

6. In 2005, the Working Procedures were amended to include Rule 23*bis* ("Amending Notices of Appeal").

7. Prior to the introduction of Rule 23*bis*, the Working Procedures did not explicitly allow an appellant to amend its Notice of Appeal. The means through which the European Communities sought to do so in *EC – Sardines* (2002) was by withdrawing its original Notice of Appeal, and re-filing a new one immediately thereafter.⁶ In *EC – Sardines*, the appellee (Peru) objected to the appellant (European Communities) "conditionally" withdrawing its Notice of Appeal and filing a new one. In that case, the Appellate Body considered that the manner in which the European Communities had proceeded was reasonable and permissible. Among other things, the Appellate Body stated that:

"We agree with Peru that there may be situations where the withdrawal of an appeal on condition of re-filing a new notice, and the filing thereafter of a new notice, could be abusive and disruptive. However, in such cases, we would have the right to reject the condition, and also to reject any filing of a new notice of appeal, on the grounds either that the Member seeking to file such a new notice would not be engaging in dispute settlement proceedings in good faith, or that Rule 30(1) of the *Working Procedures* must not be used to undermine the fair, prompt, and effective resolution of trade disputes. We agree with Peru that the rules must be interpreted so as to 'ensure that appellate review proceedings do not become an arena for unfortunate litigation techniques that frustrate the objectives of the DSU, and that developing countries do not have the resources to deal with'. The case before us, however, presents none of these circumstances.

In addition, we believe there are circumstances that, although not constituting 'abusive practices', would be in violation of the DSU, and would, thus, compel us to disallow the conditional withdrawal of a notice of appeal as well as the filing of a replacement notice. For example, if the conditional withdrawal or the filing of a new notice were to take place after the 60-day deadline in Article 16.4 of the DSU for adoption of panel reports, this would effectively circumvent the requirement to file appeals within 60 days of circulation of panel reports. In such circumstances, we would reject the conditional withdrawal and the new notice of appeal.

...

In the circumstances of this case, we believe that Peru has been accorded the full measure of its due process rights, because the withdrawal of the original Notice and

⁴ Appellate Body Report, *US – Line Pipe*, para. 13.

⁵ Appellate Body Report, *US – Softwood Lumber IV*, para. 6.

⁶ Appellate Body Report, *EC – Sardines*, para. 11ff.

the filing of a replacement Notice were carried out in response to objections raised by Peru, the replacement Notice was filed in a timely manner and early in the process, and the replacement Notice contained no new or modified grounds of appeal. Also, Peru has not demonstrated that it suffered prejudice as a result. Moreover, Peru was given an adequate opportunity to address its concerns about the European Communities' actions during the course of the appeal."⁷

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⁷ Appellate Body Report, *EC – Sardines*, paras. 146-147 and 150.