

**WTO Appellate Body Report: *India - Measures Affecting the Automotive Sector*, AB-2002-1 WT/DS146,175/AB/R, adopted by Dispute Settlement Body, 5 April 2002.** India, Appellant; European Communities, United States, Appellee. Korea, Third Participant. Division: Ganesan, Sacerdoti, Taniguchi. **Major Topics addressed by Appellate Body: Passive Observer Status; Withdrawal of Appeal.**

## 1. Abstract

The Appellate Body did not make any findings on substantive issues in this case. India had withdrawn its appeal of the Panel's findings according to Article 30 (1) of the *Working Procedures for Appellate Review* before the oral hearing.

## 2. Facts

According to a Public Notice issued by the Indian Ministry of Commerce, a car manufacturer that wished to import automotive kits was required to sign a Memorandum of Understanding (MOU) with the Indian Director General of Foreign Trade. This Memorandum imposed on the manufacturer an "indigenization condition" and a "trade-balancing condition." The former required the manufacturer to use a minimum amount of local parts and components, whereas the latter imposed the requirement that the exports of a firm be equal to its imports over a certain period of time.

## 3. Analysis of the Appellate Body Report

In its report, the Panel had stated that the indigenization requirement was inconsistent with Article III:4 of the GATT 1994. With regard to the trade-balancing requirement, the Panel had found a violation of Article XI:1 and of Article III:4 of the GATT. Despite the fact that India had enacted some modifications regarding the regime in question during the course of the proceedings, the Panel found it still to be in violation with the afore-mentioned provisions<sup>1</sup>. India had appealed the findings of the Panel.

In view of India's withdrawal of the appeal, the Appellate Body very briefly addressed only two procedural aspects in this case: First, it dealt with the question whether it was possible to attend the oral proceedings of an appeal without having filed a written submission as a third participant. Japan had made such a request in order to take part in the proceedings as a "passive observer." The Appellate Body agreed to grant this status to Japan in this case "on the basis that none of the participants or third participants object."<sup>2</sup>

Second, the Appellate Body took note of the letter it had received one day before the oral hearing in which India had withdrawn its appeal. The Appellate Body found it to be in accordance with Article 30 (1) of the *Working Procedures for Appellate Body Review*. Considering that withdrawal is possible any time during the appeal, the Appellate Body regarded its work as completed.

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<sup>1</sup> Panel Report, para. 8.61

<sup>2</sup> Appellate Body Report, para. 12.

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