WORLD TRADE ORGANIZATION

WT/DS366/13
2 October 2009

(09-4614)

Original: English

COLOMBIA – INDICATIVE PRICES AND RESTRICTIONS ON PORTS OF ENTRY

ARB-2009-1/25

Arbitration
under Article 21.3(c) of the
Understanding on Rules and Procedures
Governing the Settlement of Disputes

Award of the Arbitrator
Giorgio Sacerdoti

CASES CITED IN THIS AWARD

Short Title	Full Case Title and Citation
Argentina – Hides and Leather (Article 21.3(c))	Award of the Arbitrator, *Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather – Arbitration under Article 21.3(c) of the DSU*, WT/DS155/10, 31 August 2001, DSR 2001:XII, 6013
Australia – Salmon (Article 21.3(c))	Award of the Arbitrator, *Australia – Measures Affecting Importation of Salmon – Arbitration under Article 21.3(c) of the DSU*, WT/DS18/9, 23 February 1999, DSR 1999:I, 267
Brazil – Retreaded Tyres (Article 21.3(c))	Award of the Arbitrator, *Brazil – Measures Affecting Imports of Retreaded Tyres – Arbitration under Article 21.3(c) of the DSU*, WT/DS332/16, 29 August 2008
Canada – Pharmaceutical Patents (Article 21.3(c))	Award of the Arbitrator, *Canada – Patent Protection of Pharmaceutical Products – Arbitration under Article 21.3(c) of the DSU*, WT/DS114/13, 18 August 2000, DSR 2002:I, 3
Chile – Alcoholic Beverages (Article 21.3(c))	Award of the Arbitrator, *Chile – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS87/15, WT/DS110/14, 23 May 2000, DSR 2000:V, 2583
Chile – Price Band System (Article 21.3(c))	Award of the Arbitrator, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Arbitration under Article 21.3(c) of the DSU*, WT/DS207/13, 17 March 2003, DSR 2003:III, 1237
Colombia – Ports of Entry	Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry*, WT/DS366/R and Corr.1, adopted 20 May 2009
EC – Bananas III (Article 21.3(c))	Award of the Arbitrator, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Arbitration under Article 21.3(c) of the DSU*, WT/DS27/15, 7 January 1998, DSR 1998:I, 3
EC – Chicken Cuts (Article 21.3(c))	Award of the Arbitrator, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts – Arbitration under Article 21.3(c) of the DSU*, WT/DS269/13, WT/DS286/15, 20 February 2006
EC – Export Subsidies on Sugar (Article 21.3(c))	Award of the Arbitrator, *European Communities – Export Subsidies on Sugar – Arbitration under Article 21.3(c) of the DSU*, WT/DS265/33, WT/DS266/33, WT/DS283/14, 28 October 2005, DSR 2005:XXIII, 11581
EC – Hormones (Article 21.3(c))	Award of the Arbitrator, *EC Measures Concerning Meat and Meat Products (Hormones) – Arbitration under Article 21.3(c) of the DSU*, WT/DS26/15, WT/DS48/13, 29 May 1998, DSR 1998:V, 1833
EC – Tariff Preferences (Article 21.3(c))	Award of the Arbitrator, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries – Arbitration under Article 21.3(c) of the DSU*, WT/DS246/14, 20 September 2004, DSR 2004:IX, 4313
Indonesia – Autos (Article 21.3(c))	Award of the Arbitrator, *Indonesia – Certain Measures Affecting the Automobile Industry – Arbitration under Article 21.3(c) of the DSU*, WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, 7 December 1998, DSR 1998:IX, 4029
Japan – DRAMs (Korea) (Article 21.3(c))	Award of the Arbitrator, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea – Arbitration under Article 21.3(c) of the DSU*, WT/DS336/16, 5 May 2008
Korea – Alcoholic Beverages (Article 21.3(c))	Award of the Arbitrator, *Korea – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS75/16, WT/DS84/14, 4 June 1999, DSR 1999:II, 937

Short Title	Full Case Title and Citation
US – 1916 Act (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Act of 1916 – Arbitration under Article 21.3(c) of the DSU*, WT/DS136/11, WT/DS162/14, 28 February 2001, DSR 2001:V, 2017
US – Gambling (Article 21.3(c))	Award of the Arbitrator, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Arbitration under Article 21.3(c) of the DSU*, WT/DS285/13, 19 August 2005, DSR 2005:XXIII, 11639
US – Hot-Rolled Steel (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan – Arbitration under Article 21.3(c) of the DSU*, WT/DS184/13, 19 February 2002, DSR 2002:IV, 1389
US – Offset Act (Byrd Amendment) (Article 21.3(c))	Award of the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000 – Arbitration under Article 21.3(c) of the DSU*, WT/DS217/14, WT/DS234/22, 13 June 2003, DSR 2003:III, 1163
US – Section 110(5) Copyright Act (Article 21.3(c))	Award of the Arbitrator, *United States – Section 110(5) of the US Copyright Act – Arbitration under Article 21.3(c) of the DSU*, WT/DS160/12, 15 January 2001, DSR 2001:II, 657
US – Softwood Lumber IV	Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, DSR 2004:II, 571
US – Softwood Lumber IV (Article 21.5 – Canada)	Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 of the DSU*, WT/DS257/AB/RW, adopted 20 December 2005, DSR 2005:XXIII, 11357
US – Stainless Steel (Mexico) (Article 21.3(c))	Award of the Arbitrator, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico – Arbitration under Article 21.3(c) of the DSU*, WT/DS344/15, 31 October 2008
US – Zeroing (EC) (Article 21.5 – EC)	Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS294/AB/RW and Corr.1, adopted 11 June 2009

DECREES AND RESOLUTIONS OF THE GOVERNMENT OF COLOMBIA
CITED IN THIS AWARD

Abbreviation	**Description**
Decree 403/1993	*Decreto 403 del 3 de marzo de 1993* (Arbitration Exhibit COL-5)
Decree 1071/1999	*El Presidente de la República de Colombia, Decreto 1071 de 1999 (junio 26), Diario Oficial No. 43.615 de 26 de junio de 1999* (Arbitration Exhibit PAN-12)
Decree 2553/1999	(Colombia's Ministry of Foreign Trade), *Ministerio de Comercio Exterior, Decreto 2553 de 1999 (diciembre 23), Diario Oficial No. 43.827 de 23 de diciembre de 1999*
Decree 2685/1999	(Colombia's Ministry of Finance), *Ministerio de Hacienda y Crédito Público, Decreto 2685 de 1999 (diciembre 28), Diario Oficial No. 43.834 de 30 de diciembre de 1999* (Panel Exhibit COL-1)
Decree 210/2003	(Department of Public Administration) *Departamento Administrativo de la Función Publica, Decreto 210 de 2003 (febrero 3), Diario Oficial No. 45.086 de 3 de febrero de 2003*
Decree 4669/2005	*Cámara de Representantes de Colombia, Decreto 4669 de 2005 (diciembre 21), Diario Oficial No. 46.130 de 22 de diciembre de 2005*
Decree 3303/2006	(Colombia's Ministry of Trade, Industry and Tourism), *Ministerio de Comercio, Industria y Turismo, Decreto 3303 de 2006 (septiembre 25), Diario Oficial No. 46.402 de 25 de septiembre de 2006*
Decree 4646/2006	(Colombia's Ministry of Finance), *Ministerio de Hacienda y Crédito Público, Decreto 4646 de 2006 (diciembre 27), Diario Oficial No. 46.494 de 27 de diciembre de 2006*
Decree 4048/2008	(Colombia's Ministry of Finance), *Ministerio de Hacienda y Crédito Público, Decreto 4048 de 2008 (octubre 22), Diario Oficial No. 47.150 de 22 de octubre de 2008*
Resolution 4240/2000	(Colombia's Directorate of Taxes and National Customs), *Dirección de Impuestos y Aduanas Nacionales, Resolución 4240 de 2000 (junio 2), Diario Oficial No 44.037 de 9 de junio de 2000* (Panel Exhibit COL-2)
Resolution 12950/2006	*Dirección de Impuestos y Aduanas Nacionales, Resolución 12950 de 2006 (octubre 30)* (Arbitration Exhibit PAN-1)
Resolution 12956/2006	*Dirección de Impuestos y Aduanas Nacionales, Resolución 12956 de 2006 (octubre 30)* (Arbitration Exhibit PAN-1)
Resolution 13034/2006	*Dirección de Impuestos y Aduanas Nacionales, Resolución 13034 de 2006 (ocubre 31)* (Arbitration Exhibit PAN-1)
Resolution 7373/2007	*Dirección de Impuestos y Aduanas Nacionales, Resolución 7373 de 2007 (junio 22), Diario Oficial No. 46.678 de 3 julio de 2007* (Panel Exhibit PAN-34).
Resolution 7510/2007	Replaced or modified by Resolution No. 11412/2007
Resolution 7511/2007	*Dirección de Impuestos y Aduanas Nacionales, Resolución 7511 de 2007 (26 junio)* (Panel Exhibit PAN-10)

Abbreviation	Description
Resolution 7512/2007	Replaced or modified by Resolution No. 11415/2007
Resolution 7513/2007	*Dirección de Impuestos y Aduanas Nacionales, Resolución 7513 de 2007 (26 junio)* (Panel Exhibit PAN-12)
Resolution 7637/2007	*Dirección de Impuestos y Aduanas Nacionales, Resolución 7637 de 2007 (junio 28), Diario Oficial No. 46.681 de 6 de julio de 2007* (Panel Exhibit PAN-36)
Resolution 11412/2007	*Dirección de Impuestos y Aduanas Nacionales, Resolución 11412 de 2007 (28 septiembre)* (Panel Exhibit PAN-15)
Resolution 11414/2007	*Dirección de Impuestos y Aduanas Nacionales, Resolución 11414 de 2007 (28 septiembre)* (Panel Exhibit PAN-14)
Resolution 11415/2007	*Dirección de Impuestos y Aduanas Nacionales, Resolución 11415 de 2007 (28 septiembre)* (Panel Exhibit PAN-16)
Resolution 457/2008	*Dirección de Impuestos y Aduanas Nacionales, Resolución 457 de 2008 (noviembre 20), Diario Oficial No. 47.198 de 20 de noviembre de 2008* (Arbitration Exhibit COL-1)
Resolution 1749/2008	*Dirección de Impuestos y Aduanas Nacionales, Resolución 1749 de 2008 (17 diciembre)* (Arbitration Exhibit PAN-5)
Resolution 5516/2009	*Dirección de Impuestos y Aduanas Nacionales, Resolución 5516 de 2009 (22 mayo)* (Arbitration Exhibit PAN-4)
Resolution 6816/2009	*Dirección de Impuestos y Aduanas Nacionales, Resolución 6816 de 2009 (30 junio)* (Arbitration Exhibit PAN-6)
Resolution 8812/2008	*Dirección de Impuestos y Aduanas Nacionales, Resolución 8812 de 2008 (17 septiembre), Diario Oficial No. 47.124 de 26 de septiembre de 2008* (Arbitration Exhibit PAN-3)

ABBREVIATIONS USED IN THIS AWARD

Abbreviation	**Description**
Andean Community Decision 571	*Comunidad Andina, Decisión 571 – Valor en Aduana de las Mercancías Importadas (12 de diciembre de 2003)* (published in *Gaceta Oficial, Año XX, No. 1023 (15 de diciembre de 2003)*) (Panel Exhibit COL-5)
Andean Community Resolution 846	*Comunidad Andina, Resolución 846 (6 de agosto de 2004), Reglamento Comunitario de la Decisión 571 – Valor en Aduana de las Mercancías Importadas* (published in *Gaceta Oficial, Año XXI, No. 1103 (9 de agosto de 2004)*) (Panel Exhibit COL-6)
Agreement on Customs Valuation	*Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*
Colombia's Commercial Code	*Código de Comercio Colombiano, Decreto 410 de 1971, Diario Oficial No. 33.339 de 16 de junio de 1971*
Constitution of Colombia	*Constitución Política de la República de Colombia de 1991*
DIAN	(Colombia's Directorate of Taxes and National Customs) *Dirección de Impuestos y Aduanas Nacionales*
DSB	Dispute Settlement Body
DSU	*Understanding on Rules and Procedures Governing the Settlement of Disputes*
GATT 1994	*General Agreement of Tariffs and Trade 1994*
Law 5 of 1992	*El Congreso de Colombia, Ley 5 de 1992 (junio 17), Diario Oficial No. 40.483 de 18 de junio de 1992*
Law 962 of 2005	*Congreso de Colombia, Ley 962 de 2005 (julio 8), Diario Oficial No. 46.023 de 6 de septiembre de 2005*
Panel Report	Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry*, WT/DS366/R and Corr.1
Ports of entry measure	Resolution 7373/2007, as amended by Resolution 7637/2007
Triple A Committee	*Comité de Asuntos Aduaneros, Arancelarios y de Comercio Exterior*
WCO	World Customs Organization

WORLD TRADE ORGANIZATION
AWARD OF THE ARBITRATOR

Colombia – Indicative Prices and Restrictions on Ports of Entry

Parties

Colombia
Panama

ARB-2009-1/25

Arbitrator:

Giorgio Sacerdoti

I. Introduction

1. This arbitration under Article 21.3 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") concerns the "reasonable period of time" for the implementation of the recommendations and rulings of the Dispute Settlement Body (the "DSB") in the dispute *Colombia – Indicative Prices and Restrictions on Ports of Entry*.[1] This dispute concerns Colombia's use of indicative prices in customs procedures and restrictions on ports of entry available for imports of textiles, apparel, and footwear from Panama.

2. On 20 May 2009, the DSB adopted[2] the Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry* (the "Panel Report").[3] The Panel Report contained, *inter alia*, the following findings: (i) Article 128.5 e) of Decree 2685 of 28 December 1999 ("Decree 2685/1999")[4] and Article 172.7 of Resolution 4240 of 2 June 2000 ("Resolution 4240/2000")[5] issued by Colombia's Directorate of Taxes and National Customs (*Dirección de Impuestos y Aduanas Nacionales*) ("DIAN"), as well as the various resolutions establishing indicative prices, are inconsistent "as such" with the methods of valuation set out in Articles 1, 2, 3, 5, 6, 7.2(b), and 7.2(f) of the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* (the "*Agreement on Customs Valuation*")[6]; and (ii) Resolution 7373 of 22 June 2007 ("Resolution 7373/2007")[7], as amended by Resolution 7637 of 28 June 2007[8] (the "ports of entry measure") is inconsistent with

[1]WT/DS366.
[2]WT/DS366/9.
[3]WT/DS366/R and Corr.1.
[4](Colombia's Ministry of Finance) *Ministerio de Hacienda y Crédito Publico, Decreto 2685 de 1999 (diciembre 28), Diario Oficial No. 43.834 de 30 de diciembre de 1999* (Panel Exhibit COL-1).
[5](DIAN) *Dirección de Impuestos y Aduanas Nacionales, Resolución 4240 de 2000 (junio 2), Diario Oficial No 44.037 de 9 de junio de 2000* (Panel Exhibit COL-2).
[6]Panel Report, paras. 8.1 and 8.2.
[7]*Dirección de Impuestos y Aduanas Nacionales, Resolución 7373 de 2007 (junio 22), Diario Oficial No. 46.678 de 3 julio de 2007* (Panel Exhibit PAN-34).
[8]*Dirección de Impuestos y Aduanas Nacionales, Resolución 7637 de 2007 (junio 28), Diario Oficial No. 46.681 de 6 de julio de 2007* (Panel Exhibit PAN-36).

Article I.1, the first and second sentences of Article V:2, the first sentence of Article V:6, and Article XI:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994").[9] The Panel further rejected Colombia's defence that the ports of entry measure was justified under Article XX(d) of the GATT 1994 as a measure necessary to secure compliance with Colombia's customs laws and regulations.[10]

3. At the DSB meeting of 19 June 2009, Colombia indicated its intention to implement the recommendations and rulings of the DSB in this dispute and stated that it would require a reasonable period of time in which to do so.[11]

4. On 7 July 2009, Panama informed the DSB that consultations with Colombia had not resulted in an agreement on the reasonable period of time for implementation. Panama therefore requested that such period be determined through binding arbitration, pursuant to Article 21.3(c) of the DSU.[12]

5. Panama and Colombia were unable to agree on an arbitrator as contemplated by footnote 12 to Article 21.3(c) of the DSU. Therefore, by letter dated 24 July 2009, Panama requested that the Director-General appoint an arbitrator pursuant to the authority conferred upon him by that provision. The Director-General appointed me as Arbitrator on 30 July 2009, after consulting the parties. I informed the parties of my acceptance of the appointment by letter dated 3 August 2009.[13]

6. Panama and Colombia have agreed that this Award will be deemed to be an award under Article 21.3(c) of the DSU, notwithstanding the expiry of the 90-day period stipulated in that provision.[14]

7. Colombia filed its written submission on 10 August 2009. Panama filed its written submission on 17 August 2009. An oral hearing was held on 26 August 2009.

[9]Panel Report, para. 8.5.
[10]Panel Report, para. 8.7.
[11]WT/DSB/M/270, para.51.
[12]WT/DS366/10.
[13]WT/DS366/11.
[14]The 90-day period following the adoption of the Panel Report expired on 18 August 2009. By joint letter dated 31 July 2009, Panama and Colombia agreed that any award of the arbitrator in this case that is not made within 90 days of the adoption of the recommendations and rulings of the DSB shall nevertheless be deemed to be an award of the arbitrator for the purposes of Article 21.3(c) of the DSU. (See WT/DS366/12)

II. Arguments of the Parties

A. *Colombia*

8. Colombia requests that I determine the "reasonable period of time" for implementation of the recommendations and rulings of the DSB in this dispute to be 15 months from the date of adoption by the DSB of the Panel Report, that is, until 20 August 2010.[15]

9. As a matter of principle, Colombia highlights that "the choice of the means of implementation is the prerogative of the implementing Member."[16] Therefore, an implementing Member has a "measure of discretion" in selecting the means of implementation, which includes the choice of either "withdrawing or modifying" the inconsistent measure.[17] Thus, the view expressed by previous arbitrators that "the reasonable period of time ... should be the shortest period possible within the legal system of the Member"[18] must be read as a requirement to implement "the proposed new measure"[19] in the shortest period possible within that legal system. Referring to previous arbitrations, Colombia emphasizes that it is not within the arbitrator's mandate under Article 21.3(c) of the DSU to judge the manner in which the implementing Member intends to achieve compliance.[20] Rather, my mandate as arbitrator is limited to determining whether the proposed period is "reasonable"[21] in the light of the type of implementation selected.

10. Colombia also underscores that the two sets of legislative and regulatory measures concerning customs control and enforcement challenged by Panama in this dispute "are related and are part of the on-going fight against under-invoicing, contraband, and contraband-related money-laundering and drug trafficking."[22] Although Colombia is examining whether it would be possible to implement the

[15]Colombia's submission, paras. 3, 4, 45, 65, and 115.
[16]Colombia's submission, para. 23.
[17]Colombia's submission, para. 22 (referring to Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, paras. 57 and 58, where the arbitrator stated that Brazil could "remain within the range of permissible actions to comply" by lifting the import ban to remove the inconsistency with Article XI of the GATT 1994 or by modifying the existing ban to rectify the inconsistencies with the chapeau of Article XX (in turn referring to Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 37; and Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para.50)).
[18]Colombia's submission, para. 23 (quoting Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, paras. 25 and 26).
[19]Colombia's submission, para. 23. (emphasis omitted)
[20]Colombia's submission, paras. 25 and 26 (referring to Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 69; and Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 27). Colombia also refers to the arbitrator's statement in *Brazil – Retreaded Tyres (Article 21.3(c))*, that his mandate related to the "time by when the implementing Member must have achieved compliance, not to the manner in which that Member achieves compliance." Yet, the arbitrator considered that "when a Member must comply cannot be determined in isolation from the chosen means of implementation" and thus relates to the question of how a Member intends to comply. (*Ibid.*, para. 25 (emphasis omitted) (referring to Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 47))
[21]Colombia's submission, para. 26.
[22]Colombia's submission, para. 27.

recommendations and rulings of the DSB through "a single revised measure concerning customs control and customs enforcement that is sufficiently effective and comprehensive"[23], Colombia outlines its proposed means of implementation separately for each of those sets of measures.

1. Proposed Means of Implementation

(a) Indicative Prices

11. With respect to the provisions of Decree 2685/1999 and its main implementing regulation (Resolution 4240/2000) concerning the use of indicative prices as a customs control mechanism, Colombia intends to implement the DSB's recommendations and rulings "by revising the design and implementation of its customs control system based on indicative prices to more clearly separate customs valuation from the legitimate right to exercise customs control."[24] According to Colombia, this means of implementation requires time-consuming preparation and involves a complex legal process that would entail the following four essential steps.

12. First, Colombia intends to identify and evaluate whether and to what extent various provisions of Colombia's laws, regulations, and administrative orders[25] may be implicated by the DSB's recommendations and rulings and by the amendment of the indicative prices mechanism.[26] In its analysis, Colombia will also consider Andean Community Decision 571[27] and Andean Community Resolution 846[28], which relate to customs control and provide for the use of benchmark prices as control mechanisms, because Andean Community law has direct application under Colombian law.[29] Colombia estimates that this initial identification and evaluation stage will take about three months to complete.

13. Secondly, Colombia will examine different alternatives to amend its existing indicative prices system. This will include: an analysis of various international norms dealing with customs valuation and customs control; a review of the experience of other countries facing similar problems and whether they employ guarantee mechanisms; an examination of how to administer a guarantee

[23]Colombia's submission, para. 27.
[24]Colombia's submission, para. 28.
[25]Colombia refers specifically to Decree 2685/1999, Resolution 4240/2000, and (DIAN) *Manual de Valoración – Orden Administrativa* 0005, dated 28 December 2004. (Colombia's submission, para. 30)
[26]Colombia's submission, paras. 30-32.
[27]*Comunidad Andina, Decisión 571 – Valor en Aduana de las Mercancías Importadas (12 de diciembre de 2003)* (published in *Gaceta Oficial, Año XX, No. 1023 (15 de diciembre de 2003)*) (Panel Exhibit COL-5).
[28]*Comunidad Andina, Resolución 846 (6 de agosto de 2004), Reglamento Comunitario de la Decisión 571 – Valor en Aduana de las Mercancías Importadas* (published in *Gaceta Oficial, Año XXI, No. 1103 (9 de agosto de 2004)*) (Panel Exhibit COL-6).
[29]Colombia's submission, para. 30.

system based on cash deposits; and an evaluation of whether a generalized system of advance import declaration can be introduced. Colombia proposes to examine the WTO-consistency of different alternatives and the practices of the World Customs Organization (the "WCO") on customs valuation and customs control. Colombia also intends to consult with various stakeholders in the Colombian public and private sectors dealing with, and suffering from, illegitimate trade.[30] Subsequently, the DIAN will elaborate specific drafting proposals for "a mechanism of customs control that is in line with Colombia's international obligations, based on international practice, and which is effective in combating the persistent problem of under-invoicing and contraband."[31] Colombia expects that this stage of implementation will take six to nine months.

14. Thirdly, Colombia would implement the new measure into its computerized system of customs administration, which provides customs administrators with the software to conduct customs verification and control, and enables the electronic filing of import declarations. Colombia estimates that the integration of any new procedures into its "sophisticated and highly integrated"[32] computerized customs administration system, which is required by Colombian Law[33], will likely take up to four months.

15. As a fourth and final step, Colombia intends to train DIAN officials, importers, and other users of its customs control system in order to familiarize them with the new mechanism.[34] Colombia expects the initial training of DIAN officials to take two months.

16. In addition to specific steps to implement the DSB's recommendations and ruling on the use of indicative prices, Colombia intends to introduce legal reforms to ensure that customs-related bank or insurance guarantees are effectively available to importers in the context of its revised customs control system. Colombia argues that amendments to its customs securities laws would fall within the scope of proceedings under Article 21.5 of the DSU because of their "sufficiently close nexus"[35] to the

[30]Colombia's submission, para. 36. Colombia submits that this consultation is required by the constitutional principle of transparency in government administration set forth in Article 209 of the Constitution of Colombia.

[31]Colombia's submission, para. 37.

[32]Colombia's submission, para. 39.

[33]Colombia's submission, para. 39. Colombia refers specifically to Article 5 of Decree 2685/1999 and Resolution 457 of 20 November 2008 ("Resolution 457/2008") ((DIAN) *Dirección de Impuestos y Aduanas Nacionales, Resolución 457 de 2008 (noviembre 20), Diario Oficial No. 47.198 de 20 de noviembre de 2008* (Arbitration Exhibit COL-1)).

[34]According to Colombia, such training is "essential for the effectiveness" of its customs control system, which is based on self-declaration by importers and must be consistently applied by all customs authorities at all ports of entry. (Colombia's submission, para. 40)

[35]Colombia's submission, para. 42 (referring to Appellate Body Report, *US – Softwood Lumber IV (Article 21.5 – Canada)*, para. 77; and Appellate Body Report, *US – Zeroing (EC) (Article 21.5 – EC)*, para. 203).

Panel's findings. Moreover, in order to avoid any "omission"[36] in compliance, Colombia considers that it needs to reform its customs control system so as to ensure that such guarantees are effectively available to importers. Thus, Colombia submits that the development of such legal reforms must be taken into account by the arbitrator in his determination, lest there would be "an unjustified disconnect between the examination of [a] measure taken to comply in Article 21.5 DSU proceedings, and measures taken to comply that are taken into consideration for the determination of the reasonable period of time in Article 21.3(c) DSU proceedings."[37]

17. Colombia notes that customs securities are currently governed by Colombia's Commercial Code *(Código de Comercio Colombiano)*[38], and the process to amend such statute or to enact a new law on customs securities will comprise the following stages: development of reasons for amending the law; drafting of the actual reform proposal; transmission of the bill to the President's Legal Office; review by the Legal Office of the President and other Ministries; amendments of the bill in the light of comments received; renewed transmission of the revised bill to the relevant Ministries; and review by the Customs, Tariff and International Trade Matters Committee *(Comité de Asuntos Aduaneros, Arancelarios y de Comercio Exterior)* (the "Triple A Committee"). Thereafter, a legislative process composed of four successive stages will be initiated before the Colombian Parliament[39], encompassing successive debates in the Chamber of Representatives and Chamber of Senate, a debate in the special commissions of each Chamber, and a discussion in the full Chamber for adoption. Colombia argues that an additional procedural stage may be needed if discrepancies between the two Chambers of Parliament arise in order to reconcile such differences. In Colombia's estimation, the period of time required to reform Colombian law on customs securities would range from 12 to 24 months.[40]

(b) Restriction on Ports of Entry

18. In respect of the ports of entry measure[41], Colombia proposes to devise a measure that does not treat imports from Panama differently from those arriving directly from the country of origin, and that does not constitute a prohibited restriction on imports, while ensuring the enforcement of its customs laws in the most effective manner. This implementation would incorporate some "essential

[36]Colombia's submission, para. 43 (quoting Appellate Body Report, *US – Zeroing (EC) (Article 21.5 – EC)*, para. 205, in turn referring to Appellate Body Report, *US – Softwood Lumber IV (Article 21.5 – Canada)*, para. 67).

[37]Colombia's submission, para. 42.

[38]*Decreto 410 de 1971, Diario Oficial No. 33.339 de 16 de junio de 1971*.

[39]Colombia's submission, para. 44 (referring to Colombia's Law 5 of 1992 (*El Congreso de Colombia, Ley 5 de 1992 (junio 17), Diario Oficial No. 40.483 de 18 de junio de 1992*)).

[40]Colombia's submission, para. 45.

[41]Resolution 7373/2007, as modified by Resolution 7637/2007.

aspects"[42] of the existing measures, such as the advance import declaration, exemption for goods in transit, and possibly some limitations on ports of entry with generalized application.[43] Colombia foresees the following steps in implementing such measure.

19. Initially, Colombia will evaluate the Panel's findings of inconsistency in respect of different aspects of the ports of entry measure and the Panel's rejection of Colombia's defence under Article XX(d) of the GATT 1994. In the light of the Panel's finding that the ports of entry measure did not sufficiently contribute to the achievement of its customs enforcement objective, Colombia will examine what more effective alternative measures could be envisaged, and what better methods of assessing their effectiveness in combating contraband could be developed. Colombia further proposes to draw up an "inventory"[44] of the domestic norms affected by the Panel's findings, and to conduct a comparative study of different methods of ensuring effective customs control in the light of the WTO agreements and the relevant guidelines, decisions, and recommendations of the WCO. This will include an examination of how other countries having similar problems, apply customs control and security-related limitations and impose conditions on ports of entry in a WTO-consistent manner.[45] Colombia estimates that this initial evaluation stage should take between four and six months.

20. Next, Colombia will define and develop, in consultation with the public and private sectors, a mechanism to substitute the existing ports of entry measure. This will involve an "integrated study"[46] on security issues, in order to prepare additional ports of entry to process goods with a high risk of contraband, and a review of Colombia's transit regime. Colombia emphasizes that such "concerted action"[47] will have to take into account the different stages of development and technical capacity of Colombian customs authorities and the difficult socio-economic and violence-related issues that Colombia faces in certain regions.[48] Colombia estimates that the development of a revised measure could be completed within six months.

21. Finally, Colombia will implement the new measure that replaces the ports of entry measure into domestic law. According to Colombia, this process will involve the following steps: analysis of the need to amend the norm in question and identification of relevant provisions in related legal instruments affected thereby; drafting of the amendment; examination of its legal and technical correctness; review of any required parallel changes; exchange of comments and suggestions; and

[42]Panama's submission, para. 47.
[43]Colombia's submission, para. 47.
[44]Colombia's submission, para. 50.
[45]Colombia's submission, para. 51.
[46]Colombia's submission, para. 52.
[47]Colombia's submission, para. 53.
[48]Colombia also suggests that, because most ports are under private concession, due regard must be given to the contractual rights of port operators. (Colombia's submission, para. 53)

approval and inclusion of the corresponding adjustments.[49] Colombia emphasizes that the decision-making process of the DIAN involves various departments responsible for technical, legal, and policy-related aspects of the proposed amendment[50], other Ministries, and review by the Triple A Committee.

22. In addition, Colombia warns against the "simplistic suggestion"[51] that there would be no need for the Arbitrator to award the requested reasonable period of time based on the prior, very prompt, removal of a ports of entry measure in 2006 following the conclusion of the Customs Cooperation Protocol *(Protocolo de Procedimiento de Cooperación e Intercambio de Información Aduanera entre las Autoridades Aduaneras de la República de Panamá y la República de Colombia)* between Panama and Colombia. According to Colombia, the "broad and comprehensive"[52] customs cooperation agreement reached with Panama at that time justified the "extra-ordinary, abbreviated procedure"[53] that allowed Colombia to remove the ports of entry measure in a shorter period of time than under normal procedures.[54] Colombia argues that the situation in the present arbitration is distinct, insofar as it is under no obligation "to simply remove the ports of entry measure".[55] Instead, Colombia intends to design a "new and more permanent measure"[56] that will implement the DSB's recommendations and rulings while securing effective customs enforcement. Colombia adds that the existing measure needs to stay in place until the new measure is designed.[57]

2. "Particular Circumstances"

23. Colombia recalls that Article 21.3(c) of the DSU establishes a guideline of 15 months for the reasonable period of time for implementation, but that "particular circumstances" may justify a longer or shorter period. Referring to previous arbitrations, Colombia considers that it would be up to Panama to indicate the particular circumstances that would justify a departure from the 15-month

[49]Colombia's submission, para. 56.
[50]Colombia mentions the *Subdirección de Gestión Técnica Aduanera*, the *Subdirección de Gestión de Comercio Exterior*, the *Dirección de Gestión Jurídica*, the *Dirección de Gestión de Aduanas*, and the *Dirección General*. (Colombia's submission, para. 57)
[51]Colombia's submission, para. 58.
[52]Colombia's submission, para. 59.
[53]Colombia's submission, para. 59. According to Colombia, such abbreviated procedure consisted of an executive decision by the President of Colombia to remove unilaterally the ports of entry measure, in use of the particular powers assigned to him as highest authority in international relations by Article 189 of the Political Constitution of Colombia *(Constitución Política de la República de Colombia de 1991).*
[54]According to Colombia, the Customs Cooperation Protocol's failure to deliver the expected results and Panama's refusal to comply with its obligations thereunder, resulted in the rapid reinstatement of essentially the same measure. (Colombia's submission, paras. 60 and 61)
[55]Colombia's submission, para. 61.
[56]Colombia's submission, para. 61.
[57]Colombia's submission, para. 62.

guideline.[58] Colombia acknowledges that previous arbitrators have found that the 15-month guideline presents an "outer limit or maximum in a usual case"[59], and that it is not a rule from which arbitrators may deviate only in "exceptional"[60] circumstances. However, Colombia considers that the 15-month period should be viewed as a "benchmark" or "a framework within which" the calculation of the reasonable period of time is performed.[61] Colombia also suggests that the structure of Article 21, and the notions of flexibility and balance inherent in the term "reasonable", suggest that, where immediate compliance is not practicable, compliance within a "reasonable" period of time is also "prompt".[62]

24. Colombia argues that the following four "particular circumstances" warrant a reasonable period of time equal to at least the 15-month guideline provided in Article 21.3(c) of the DSU.

(a) Need for Legislative and Regulatory Action

25. Colombia submits that the implementation of the Panel's "as such" findings will require it to amend its laws and regulations and to issue new rules of general application. Referring to previous arbitrations, Colombia argues that its implementing measures involve "legislative and regulatory decision-making", which entails "setting new rules", and therefore are more time-consuming than "administrative decision-making", which simply involves applying existing regulations.[63] Colombia emphasizes that WTO Members cannot be expected to have recourse to "'extraordinary' proceedings"[64], and may follow "standard practice"[65], to amend laws and regulations even when this is

[58]Colombia's submission, para. 69 (quoting Award of the Arbitrator, *EC – Bananas III (Article 21.3(c))*, para. 19; and Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 27).

[59]Colombia's submission, para. 70 (referring to Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 25).

[60]Colombia's submission, para. 71.

[61]Colombia's submission, paras. 71 and 72 (referring to Appellate Body Report, *US – Softwood Lumber IV*, para. 92, where the Appellate Body interpreted the term "guideline" in Article 14 of the *Agreement on Subsidies and Countervailing Measures* as a "framework within which [the calculation of a benefit] is to be performed").

[62]Colombia's submission, para. 73.

[63]Colombia's submission, para. 79 (referring to Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 35).

[64]Colombia's submission, para. 81 (quoting Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 73, in turn referring to Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 25; Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 49; Award of the Arbitrator, *Korea – Alcoholic Beverages (Article 21.3(c))*, para. 42; Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 51; and Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 74).

[65]Colombia's submission, para. 80 (quoting Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 49; and Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 79).

not required by law. Colombia adds that previous arbitrators have recognized the importance of a "pre-legislative phase of internal inter-agency consultation"[66], which can also be time-consuming.

26. According to Colombia, the legal process of amending Decree 2685/1999 and its implementing regulation (Resolution 4240/2000) will consist of the following four steps: (i) an internal DIAN process, in which various DIAN departments[67] analyze the need to amend the relevant norms and related legal instruments (six to nine months);[68] (ii) evaluation of the new administrative procedures of customs control and release of guarantees by various departments[69] of the Department of Public Administration (*Departamento Administrativo de Función Publica*), pursuant to Decree 4669 of 21 December 2005 ("Decree 4669/2005")[70] and paragraph 2 of Article 1 of Law 962 of 2005[71] (one to two months)[72]; (iii) review of the implementing measure by the Ministry of Trade, Industry and Tourism *(Ministerio de Comercio, Industria y Turismo)*, the Ministry of Finance *(Ministerio de Hacienda y Crédito Público)*, and the Triple A Committee (two to four months)[73]; and (iv) review and approval of the implementing measure by the President's Office and by the Legal Office, publication in the Official Gazette *(Diario Oficial)*, and amendment of any Resolutions impacted by the implementing measure (up to three months).[74]

(b) Complexity of the Measure

27. Colombia argues that the complexity of amending measures related to customs control and customs enforcement is another "particular circumstance" that justifies a period of implementation of at least 15 months. Colombia points out that previous arbitrators considered that the "complex nature

[66]Colombia's submission, para. 82 (referring to Award of the Arbitrator, *US – Hot-Rolled Steel (Article 21.3(c))*, para. 38; and Award of the Arbitrator, *Chile – Alcoholic Beverages (Article 21.3(c))*, para. 43).

[67]Required by Article 2 of Resolution 457/2008. (Colombia's submission, para. 87) For the DIAN departments involved, see *supra*, footnote 50.

[68]Colombia's submission, paras. 86 and 87. See also *supra*, para. 20.

[69]Colombia argues that Articles 3-8 of Decree 4669/2005 require review of the proposed new procedures by the *Grupo de Racionalización y Autorización de Tramites* and the *Comités Sectoriales* and *Comités Intersectoriales* of the Department of Public Administration. (Colombia's submission, para. 88)

[70]*Cámara de Representantes de Colombia, Decreto 4669 de 2005 (diciembre 21), Diario Oficial No. 46.130 de 22 de diciembre de 2005.*

[71]*El Congreso de Colombia, Ley 962 de 2005 (julio 8), Diario Oficial No. 46.023 de 6 de septiembre de 2005.*

[72]Colombia's submission, para. 88.

[73]Colombia's submission, paras. 89 and 90. According to Colombia, the role and responsibilities of the Triple A Committee are set out in Decree 403 of 3 March 1993, Decree 2553 of 23 December 1999, Decree 210 of 3 February 2003, and Decree 3303 of 25 September 2006. (Colombia's submission, footnote 56 to para. 90 (referring to Arbitration Exhibit COL-5))

[74]Colombia's submission, paras. 91 and 92. According to paragraph 25 of Article 189 of the Constitution of Colombia, it is the responsibility of the President to amend laws and regulations affecting the customs regime and to regulate external trade.

of implementing measures"[75] is a relevant factor in determining the reasonable period of time under Article 21.3(c) of the DSU.

28. Colombia notes that the field of "anti-smuggling" is heavily regulated by a series of "interdependent and overlapping" regulations affecting many sectors of activity, and when this is the case, "adequate time will be required to draft the changes, consult affected parties, and make any consequent modifications as needed".[76] Colombia adds that the amendment of both the indicative prices mechanism and the ports of entry measure will call for an examination of the consequences of those amendments on the "entire anti-smuggling legal framework".[77] One previous arbitrator attached "some significance" to an "examination of how proposed legislation will impact the existing regulatory regime" for the process of adopting implementing legislation.[78] Colombia also sees analogies with another arbitrator's statement that the "technical complexities"[79] of implementing a regime for the allocation of anti-dumping duties is relevant as a "particular circumstance" for determining the reasonable period of time.

29. Colombia rejects Panama's argument that the implementing measure is not particularly complex, because compliance can be achieved by a simple change of wording or the repeal of a particular provision. Colombia recalls that it is not the arbitrator's task to pass judgment on the means of implementation it has chosen and on whether a different method of implementation could have achieved compliance in a shorter period.[80] Colombia contends further that its implementing legislation may either increase the number of ports through which Panama's imports may enter, or suppress the advance import declaration, while at the same time securing effective customs control and enforcement. One arbitrator observed that the need to safeguard public morals and public order "increase[d] the complexity of any legislative solution"[81] that authorized internet gambling. Colombia

[75]Colombia's submission, para. 94 (quoting Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 88, in turn referring to Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, para. 50; and Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 60).

[76]Colombia's submission, para. 95 (quoting Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, para. 50).

[77]Colombia's submission, para. 96.

[78]Colombia's submission, para. 96 (quoting Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 46).

[79]Colombia's submission, para. 97 (quoting Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 61).

[80]Colombia's submission, para. 98.

[81]Colombia's submission, para. 99 (quoting Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 47).

suggests that, similarly, in the circumstances of this case, "[t]he more ports through which access is allowed, the more safeguard legislation may need to be enacted to ensure that the anti-smuggling objective is not nullified."[82]

(c) Importance of the Measures in the Domestic System

30. Colombia argues further that the importance of the measures in the particular situation of Colombia also justifies a period of time for implementation of at least 15 months. Colombia recalls that the arbitrator in *Chile – Price Band System* considered that the "unique role and impact"[83] of the price band system on Chilean society was a relevant factor in determining the reasonable period of time.

31. According to Colombia, the Panel acknowledged the existence of a serious problem of contraband from Panama linked to money-laundering and drug trafficking, and recognized that under-invoicing and smuggling was "a relatively more important reality for Colombia than for many other countries".[84] Colombia argues that the indicative prices and ports of entry measures were part of the "set of regulatory measures"[85] adopted to combat these problems that undermine the economic, social, and political stability of Colombia. For Colombia, the importance of ensuring that new measures address the complex economic, social, and political issues facing Colombia, and that such measures "are integrated with minimal disruption to the efficacy of the existing anti-smuggling regime"[86], justifies the assessment of a longer period of time for implementation.

(d) Developing Country Status

32. Finally, Colombia argues that Article 21.2 of the DSU requires that Colombia's developing country status be taken into account in the determination of the reasonable period of time for implementation. Referring to previous arbitrations, Colombia submits that Article 21.2 enjoins the arbitrator to be "generally mindful"[87] of the difficulties that a developing country may face in implementing the recommendations and rulings of the DSB, such as "severe economic and financial

[82]Colombia's submission, para. 101.
[83]Colombia's submission, para. 103 (quoting Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 48).
[84]Colombia's submission, para. 104 (quoting Panel Report, para. 7.566).
[85]Colombia's submission, para. 104.
[86]Colombia's submission, para. 106.
[87]Colombia's submission, para. 108 (quoting Award of the Arbitrator, *Argentina – Hides and Leather (Article 21.3 (c))*, para. 51, in turn quoting Award of the Arbitrator, *Chile – Alcoholic Beverages (Article 21.3(c)*, para. 45).

problems".[88] Colombia also recalls that, in the "unusual circumstances" of *Chile – Price Band System*, the arbitrator was not swayed towards either a longer or shorter period of time[89], because the implementing Member had failed to indicate any "specific obstacles" that it was facing as a developing country, and the complaining Member (that was also a developing country) was experiencing "daunting financial woes" at that time.[90] In contrast, in the present case, Colombia submits that it is a developing country "affected by the global economic crisis, in a continuing fight against contraband-related money-laundering and drug trafficking", and that there is no evidence that Panama is currently experiencing "daunting financial woes".[91]

33. In the light of the foregoing, Colombia requests that I determine the "reasonable period of time" for implementation of the recommendations and rulings of the DSB in this dispute to be 15 months from the date of adoption by the DSB of the Panel Report, to expire on 20 August 2010.[92]

B. *Panama*

34. Panama requests that I determine the "reasonable period of time" for implementation of the recommendations and rulings of the DSB in this dispute to be four months and 19 days from the date of adoption by the DSB of the Panel Report, that is, until 9 October 2009.

35. Panama argues that a joint reading of Articles 21.1 and 21.3 of the DSU suggests that "prompt" compliance is equated with "immediate" compliance. However, if it is "impracticable" to comply immediately, Article 21.3(c) provides the implementing Member with a reasonable period of time in which to do so. Panama submits that Colombia, as the implementing Member, bears the burden of proving that the period of time it is requesting for implementation is "reasonable".[93] Panama considers that Colombia has failed to discharge this burden.

36. In determining the reasonable period of time for implementation, Panama submits that the arbitrator should take into account the following "general principles"[94] elaborated by previous arbitrators in determining the reasonable period for implementation in this case: the implementing

[88]Colombia's submission, para. 108 (referring to Award of the Arbitrator, *Argentina – Hides and Leather (Article 21.3(c))*, para. 51; in turn quoting Award of the Arbitrator, *Indonesia – Autos (Article 21.3(c))*, para. 24).

[89]Colombia's submission, para. 111 (referring to Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 56).

[90]Colombia's submission, paras. 111 and 112 (quoting Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 56).

[91]Colombia's submission, para. 113.

[92]Colombia's submission, para. 115.

[93]Panama's submission, para. 26 (referring to Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, para. 47; Award of the Arbitrator, *US – 1916 Act (Article 21.3(c))*, para. 32; and Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 44).

[94]Panama's submission, para. 28.

Member must commence implementation as from the date of adoption of the DSB recommendations and rulings[95]; the implementing Member has discretion in choosing the means of implementation[96], but that discretion is not an "unfettered" right to choose any method of implementation; the mandate of the arbitrator is limited to determining *when* compliance can be achieved, but such determination is closely related to the question of *how* the Member intends to implement[97]; the implementing Member must establish that the proposed period is the "shortest period possible" within its domestic legal system to implement the recommendations and rulings of the DSB[98]; although recourse to "extraordinary" means of compliance is not required[99], the implementing Member is expected to use all flexibility available within its domestic legal system to implement the recommendations and rulings of the DSB[100]; the implementing Member must not include in its method of implementation objectives that are extraneous to the specific recommendations and rulings of the DSB[101], such as the larger objective of an overall reform of the affected domestic system[102] if such inclusion would prolong the implementation period; and the implementing Member must not use the implementation period to conduct studies or to consult experts to demonstrate the consistency of a measure already found to be WTO-inconsistent.[103]

37. For Panama, the fact that Colombia may need to address the underlying problems of combating customs fraud and contraband, money-laundering, and drug trafficking, is not relevant to determining the reasonable period of time. Panama emphasizes that the removal or modification of a measure in the process of implementation is distinct from the removal of the "underlying economic or social or other conditions"[104] that justified the adoption of that measure. Thus, "non-legal

[95]Panama's submission, para. 30 (referring to Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 66).

[96]Panama's submission, para. 30 (referring to Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 41; and Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48, in turn quoting Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 38).

[97]Panama's submission, para. 30 (referring to Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 47).

[98]Panama's submission, para. 30 (referring to Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 43; and Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 51, in turn referring to Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 44).

[99]Panama's submission, para. 30 (referring to Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 42; and Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48, in turn referring to Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 25).

[100]Panama's submission, para. 30 (referring to Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 42; and Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48, in turn referring to Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 25).

[101]Panama's submission, para. 30 (referring to Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 69).

[102]Panama's submission, para. 30 (referring to Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 48).

[103]Panama's submission, para 30 (referring to Award of the Arbitrator, *Australia – Salmon (Article 21.3(c))*, para. 35, in turn quoting Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 39).

[104]Panama's submission, para. 6 (referring to Award of the Arbitrator, *Argentina – Hides and Leather (Article 21.3(c))*, para. 41).

considerations"[105] should not be taken into consideration in determining the period of time for implementation. If the implementing Member fails to establish that the proposed period is the shortest period possible for implementation within its domestic legal system, then the arbitrator has to determine the shortest period possible on the basis of the evidence presented by the parties.[106]

1. Proposed Means of Implementation regarding Indicative Prices and Ports of Entry Restrictions

38. Panama criticizes Colombia for failing to provide the Arbitrator with adequate information on the "proper scope" and "specific content" of its implementing measure.[107] According to Panama, Colombia is still merely reflecting upon how it might implement the recommendations and rulings of the DSB.[108] Panama recalls that it is incumbent upon the implementing Member to indicate the means of implementation, because "the more information that is known about the details of the implementing measure, the greater guidance to an arbitrator in selecting a reasonable period of time."[109] In indicating that it is still "studying its options", Colombia has failed to provide information even on the "general thrust" of its implementing measures, thereby rendering the Arbitrator's task more difficult.[110]

39. In addition, Panama submits that Colombia has not provided precise information as to the length of time it requires for implementation. Even though Colombia initially requests a reasonable period of time of 15 months[111], it subsequently refers to a reasonable period of time of "*at least*" 15 months.[112] However, Panama suggests that the total number of months outlined by Colombia for the implementation of the Panel's findings on the indicative prices and ports of entry measures greatly exceeds 15 months: between 27 and 42 months for indicative prices[113], and between 22 and 30 months for the ports of entry measure.[114] Panama adds that Colombia is not sufficiently clear on the

[105]Panama's submission, para. 7.
[106]Panama's submission, para. 32 (referring to Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 43; Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 51 in turn referring to Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 44).
[107]Panama's submission, para. 35.
[108]Panama's submission, para. 35.
[109]Panama's submission, para. 36 (quoting Award of the Arbitrator, *Chile –Price Band System (Article 21.3(c))*, para. 37).
[110]Panama's submission, para. 36.
[111]Panama's submission, para. 37 (referring to Colombia's submission, para. 3).
[112]Panama's submission, para. 37 (referring to Colombia's submission, para. 65). (original emphasis)
[113]Panama's submission, para. 37 (referring to Colombia's submission, paras. 30-45).
[114]Panama's submission, para. 37 (referring to Colombia's submission, paras. 46-56 and 83-92).

steps and timeframe required to implement the Panel's finding on indicative prices, and provides conflicting estimates of the timeframe required to implement the Panel's finding in respect of the ports of entry restrictions.[115]

40. Moreover, Panama argues that Colombia has failed to take any concrete steps towards implementation since the adoption of the Panel Report by the DSB. Panama notes that the implementing Member must commence implementation as from the date of adoption of the recommendations and rulings of the DSB[116], and that, if the arbitrator perceives that it has not done so, this should be taken into account in determining the reasonable period of time.[117] If Colombia has only undertaken preliminary internal discussions with respect to implementation, Panama argues that "mere discussion is not implementation" and "[t]here must be something more to evidence that a Member is moving toward implementation".[118] Thus, Panama submits that any delay caused by Colombia's inaction to date cannot justify a longer period for implementation. Panama emphasizes further that, after the adoption of the recommendations and rulings of the DSB, Colombia adopted Resolution 6816/2009[119], which extended the ports of entry measure until 31 December 2009.[120] According to Panama, absent such extension, the ports of entry measure would have lapsed, and Colombia would have brought itself into conformity. Thus, instead of undertaking steps towards implementation since the time of adoption of the Panel Report by the DSB, Colombia has "decided to maintain the WTO-inconsistent measure"[121] and to postpone the implementation process.

41. Panama notes further that Article 3.7 of the DSU provides that "the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned". Thus, according to Panama, withdrawal of the inconsistent measures should be the preferred means of implementation. Although Panama acknowledges that the implementing Member has "discretion in selecting the means of implementation that it deems most appropriate"[122], it does not have "an unfettered right to choose any method of implementation".[123] Therefore, the Arbitrator must

[115]Panama's submission, para. 38 (referring to Colombia's submission, paras. 37, 91, and 92).
[116]Panama's submission, para. 39 (referring to Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 66).
[117]Panama's submission, para. 41 (quoting Award of the Arbitrator, *US – Section 110(5) of the Copyright Act (Article 21.3(c))*, para. 46).
[118]Panama's submission, para. 42 (quoting Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 66).
[119]Panama's submission, para. 43 (referring to Arbitration Exhibit PAN-6).
[120]Panama's submission, para. 43.
[121]Panama's submission, para. 44.
[122]Panama's submission, para. 46 (quoting Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 25).
[123]Panama's submission, para. 46 (quoting Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48, in turn quoting Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 69).

consider whether "the implementing action falls within the range of permissible actions that can be taken in order to implement the DSB's recommendations and rulings."[124] According to Panama, any action other than the withdrawal of the indicative prices and ports of entry measures would fall outside the permissible range of actions for implementation. This is because any action to replace the "payment" under the indicative prices measure with a compulsory "guarantee" system would fall foul of Article 13 of the *Agreement on Customs Valuation*.[125] Similarly, any measure that maintains restrictions on the ports available for entry of goods from Panama would be inconsistent with Article XI of the GATT 1994.[126] Moreover, the implementing Member is expected to use all the flexibility available in its domestic legal system to implement, without having recourse to "extra-ordinary" means.[127] According to Panama, Colombia can withdraw the measures through ordinary administrative means.

42. Furthermore, Panama considers that Colombia does not have to undertake a comprehensive reform of its customs control and enforcement regime in order to implement the recommendations and rulings of the DSB. Panama contests Colombia's argument that the Panel's findings on the use of indicative prices "impact a large number of provisions in the Customs Statute and in Resolution 4240 dealing with the importation process, customs control, release subject to guarantees and customs valuation."[128] For Panama, the Panel's findings were specific to Article 128.5 e) of Decree 2685/1999, Article 172.7 of Resolution 4240/2000, and the various Resolutions that establish indicative prices on goods from Panama, which were found to be inconsistent with Articles 1, 2, 3, 5, 6, 7.2(b), and 7.2(f) of the *Agreement on Customs Valuation*. Thus, Colombia's obligations to implement extend only to those measures. Panama also disputes Colombia's allegation that implementation of the recommendations and rulings of the DSB will require amendment of the guarantee provisions of Colombia's Commercial Code. In Panama's view, it is not clear how such amendment would ensure that guarantees would effectively be made available by bank and insurance companies.[129] According to Panama, the Panel declined to rule on whether the payment provided for in Article 128.5 e) of Decree 2685/1999 constituted a guarantee within the meaning of Article 13 of the *Agreement on Customs Valuation*.[130] Furthermore, if Colombia wished to amend its guarantee provisions for customs purposes, it is not clear why this could not be done by amending its customs regulations.

[124]Panama's submission, para. 46 (quoting Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48, in turn quoting Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 27).
[125]Panama's submission, para. 46.
[126]Panama's submission, para. 46.
[127]Panama's submission, para. 47 (referring to Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48).
[128]Panama' submission, para. 49 (quoting Colombia's submission, para. 31).
[129]Panama's submission, para. 51 (quoting Colombia's submission, para. 42).
[130]Panama's submission, para. 52 (referring to Panel Report, para. 7.79).

43. Panama also dismisses Colombia's argument that the Panel's findings may have affected "the basic legal premise"[131] of the ports of entry measure, namely, Article 41 of Decree 2685/1999, as further regulated by Article 39 of Resolution 4240/2000, which authorizes limiting the number of ports of entry, if necessary, for purposes of customs control and enforcement. Panama notes that Article 41 of Decree 2685/1999 was not within the Panel's terms of reference, and therefore Colombia does not have to amend this provision in order to bring itself into conformity. Panama argues that the relevant consideration is whether the implementing measure is required by the relevant recommendations and rulings of the DSB.[132] Thus, although Colombia retains the discretion to work "on the larger task"[133] of revising its customs control regime, for Panama, that task is not a relevant consideration for the Arbitrator's determination of the reasonable period of time for implementation of the specific recommendations and rulings of the DSB.

44. Panama further stresses that previous arbitrators have declined to take into consideration "non-legal factors"[134] that were not specifically required by domestic law for the withdrawal or modification of the measures at issue. Therefore, in Panama's view, the following "non-legal factors" are not relevant for the Arbitrator's determination of the reasonable period of time: consultations with the public and private sectors on the application of Colombia's new customs control system[135]; changes to Colombia's computerized system of customs control[136]; and training of users and DIAN officials in the new mechanism.[137]

2. "Particular Circumstances"

45. Panama also recalls that Article 21.3(c) provides a guideline that the reasonable period of time should not exceed 15 months, but arbitrators may depart from such guideline depending on the "particular circumstances" of the case. According to Panama, previous arbitrators have considered the following particular circumstances in determining the reasonable period of time for implementation: whether the means of implementation are administrative or legislative[138]; whether the proposed

[131]Panama's submission, para. 53 (quoting Colombia's submission, para. 51).
[132]Panama's submission, para. 53 (quoting Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 31).
[133]Panama's submission, para. 54 (referring to Award of the Arbitrator, *Argentina – Hides and Leather (Article 21.3(c))*, para. 47).
[134]Panama's submission, paras. 56 (referring to Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 61; and Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 69).
[135]Panama's submission, para. 55 (referring to Colombia's submission, para. 36). Panama also argues that Article 209 of the Constitution of Colombia provides for only general principles of transparency and does not require specific consultations with the private sector. (*Ibid*., para. 56)
[136]Panama's submission, para. 55 (referring to Colombia's submission, para. 39).
[137]Panama's submission, para. 55 (referring to Colombia's submission, para. 40).
[138]Panama's submission, para. 31 (referring to Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 25).

means of implementation are complex or simple; whether there are legally binding, as opposed to discretionary, component steps for implementation[139]; and whether the Member has enacted similar implementing legislation in the past.[140]

(a) Need for Legislative and Regulatory Action

46. Panama disagrees with Colombia that implementation of the recommendations and rulings of the DSB requires both legislative and regulatory action. Panama emphasizes that both Decree 2685/1999 and Resolution 4240/2000 are administrative acts issued by the Executive Branch of the Colombian Government, and therefore no legislative action is required to modify or withdraw provisions of these legal instruments.[141] In addition, because Colombia is not required to amend the guarantee provisions of its Commercial Code in order to implement the recommendations and rulings of the DSB, delays associated with legislative procedures are not relevant for the Arbitrator's determination.

47. Panama recalls that only the specific measures found to be inconsistent by the Panel need to be brought into conformity.[142] Panama submits that the period of time suggested by Colombia to withdraw or modify such instruments does not constitute the "shortest possible period" within its domestic legal system[143], because it is not clear whether all the steps outlined by Colombia are required.

48. In particular, Panama contests Colombia's argument that an amendment to specific articles of Decree 2685/1999 will require an internal DIAN decision-making process[144], pursuant to Article 2 of Resolution 457 of 20 November 2008 ("Resolution 457/2008").[145] Panama adds that Article 2 sets out procedures for the introduction of a new requirement[146], whereas the modification or withdrawal of the indicative prices and ports of entry measures will not entail such new requirement. Panama also questions Colombia's estimation that the internal DIAN decision-making process will take six to nine

[139]Panama's submission, para. 31 (referring to Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, paras. 49-52).

[140]Panama's submission, para. 31 (referring to Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 55).

[141]Panama's submission, para. 58.

[142]Panama lists Article 128.5 e) of Decree 2685/1999; Article 172.7 of Resolution 4240/2000; various specific Resolutions establishing indicative prices for certain products; and Resolution 7373/2007, which provides the legal bases for the ports of entry measure. (Panama's submission, para. 64)

[143]Panama's submission, para. 72.

[144]Panama's submission, para. 65 (referring to Colombia's submission, para. 86). According to Panama, that provision is applicable only to administrative acts, documents, and forms of the DIAN, and therefore does not apply to amendments to Decree 2685/1999, which is, rather, a Decree issued by the President of Colombia.

[145]*Dirección de Impuestos y Aduanas Nacionales, Resolución 457 de 2008 (noviembre 20), Diario Oficial No. 47.198 de 20 de noviembre de 2008* (Arbitration Exhibit COL-1).

[146]Panama's submission, para. 66 (referring to Article 2 of Resolution 457/2008).

months, because neither Resolution 457/2008 nor Administrative Order No. 0002 of 8 May 2009[147] indicate any specific timeframes other than a period of 13 working days for the "formalisation of the procedure".[148] Panama suggests further that any amendments to the regulations at issue need not be subject to review by the Department of Public Administration, pursuant to Decree 4669/2005, because Article 2 of Resolution 457/2008 does not appear to require such an evaluation procedure. In any event, Panama notes that Decree 4669/2005 does not provide for any specific timeframe, despite Colombia's estimation that its review will take one to two months.[149] In addition, Panama is of the view that Colombia has failed to provide any evidence in support of its assertions that: (i) the Ministry of Trade, Industry and Tourism *(Ministerio de Comercio, Industria y Turismo)* and the Ministry of Finance *(Ministerio de Hacienda y Crédito Público)* are required to review and approve the implementing measure[150]; (ii) the President's Office will have to approve the draft new measure before review by the Legal Office of the President, signature by the President, and publication in the *Diario Oficial*[151]; and (iii) modification of the relevant Resolutions should take up to three months.[152]

49. Panama posits further that Colombia can withdraw or modify Article 128.5 e) of Decree 2685/1999 relating to indicative prices through ordinary administrative means, because the President of Colombia has the authority to amend Decree 2685/1999 after having heard the views of the Triple A Committee.[153] Although Colombian law provides no specific timeframes for the amendment of that Decree, according to Article 3 of Decree 3303/2006, the Triple A Committee shall meet in ordinary session every three months, or extraordinarily at any time at the behest of its President (the Vice-Minister of Trade).[154]

50. Similarly, Panama points out that Article 28.6 of Decree 4048/2008 provides the Deputy Directorate of Technical Customs Management of Colombia's Customs Administration with the authority to establish, modify, and withdraw reference prices, including indicative prices.[155] Likewise, Panama suggests that Article 6.12 of Decree 4048/2008 provides the Directorate General of

[147](DIAN) *Direccion de Gestion Organizacional – Orden Administrativa 0002*, dated 8 May 2009.
[148]Panama's submission, para. 67 (referring to Article 2, para. 3, of Resolution 457/2008; and para. 4.4.6 of (DIAN) *Direccion de Gestion Organizacional – Orden Administrativa 0002*, dated 8 May 2009).
[149]Panama's submission, para. 68 (referring to Colombia's submission, para. 88).
[150]Panama's submission, para. 69 (referring to Colombia's submission, para. 89; Decree 210/2003; and Decree 4646/2006).
[151]Panama's submission, para. 70 (referring to Colombia's submission, paras. 91 and 92).
[152]Panama's submission, para. 71 (referring to Colombia's submission, para. 92).
[153]In particular, Panama notes that the President has such authority under Article 189.25 of Colombia's Constitution, Article 3 of Law 6 of 1971, and Article 2 of Law 7 of 1991. (Panama's submission, para. 73)
[154]Panama's submission, para. 74.
[155]Panama notes that Article 28.6 of Decree 4048/2008 replaced Article 23 of Decree 1071/1999 as establishing such authority. (Panama's submission, para. 78)

the DIAN "full discretion" to withdraw or modify both Resolution 7373/2007 and Resolution 4240/2000.[156] None of these provisions provides for specific timeframes, or requires participation of other governmental agencies in the decision-making process.

51. Furthermore, Panama contends that Colombia's previous repeal of similar indicative prices and ports of entry measures as a result of a mutually agreed solution with Panama illustrates that the measures at issue in this dispute can be withdrawn or modified almost immediately. Panama observes that, when it reached a mutually agreed solution with Colombia on 31 October 2006, Colombia withdrew the indicative prices and ports of entry measures on 1 November 2006. Panama contends that Colombia is now in a legal position to take similar administrative action, without recourse to extraordinary procedures. Panama rejects Colombia's argument that the current situation is "fundamentally different", because, in its view, the legal authority under Colombian law to withdraw or modify the measures at issue is the same.[157] Panama observes further that, contrary to Colombia's suggestion, the repeal of the ports of entry measure in 2006 was not the result of "extra-ordinary, abbreviated procedures" involving the President's authority under Article 189 of the Constitution of Colombia, but was rather issued by the Director-General of the DIAN, in exercise of his ordinary functions.[158]

(b) Complexity of the Measure

52. Panama disagrees with Colombia that the alleged complexity of the measures relating to Colombia's customs control and customs enforcement constitutes a "particular circumstance" that justifies a period of implementation of at least 15 months.[159] Panama considers that the measures "in and of themselves"[160] are not complex, and that the process for amending them is not complex. In Panama's view, what may be "complex" is the "contentiousness" of these measures in Colombia.[161] However, several arbitrators have dismissed the "contentiousness" of a measure as a "particular circumstance" in their determination of the reasonable period of time.[162]

[156]Panama notes that Article 6.12 of Decree 4048/2008 replaced Article 19(i) of Decree 1071/1999 as establishing such authority. (Panama's submission, paras. 81-83)

[157]Panama's submission, para. 87 (referring to Colombia's submission, para. 61).

[158]Panama's submission, para. 88. According to Panama, the DIAN's Director-General had authority pursuant to Decrees 1071/1999 and 2685/1999.

[159]Panama's submission, para. 91 (referring to Colombia's submission, para. 93).

[160]Panama's submission, para. 92. Panama notes that Article 128.5 e) of Decree 2685/1999 and Article 172.7 of Resolution 4240/2000 each consist of only one paragraph, and Resolution 7373/2007 comprises only two pages.

[161]Panama's submission, para. 92.

[162]Panama's submission, para. 92 (referring to Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 61; and Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 47).

(c) Importance of the Measure in the Domestic System

53. Panama also dismisses the importance of the indicative prices and ports of entry measures in Colombia's domestic system as a "particular circumstance" justifying a reasonable period of time of at least 15 months. Panama distinguishes the facts before the arbitrator in *Chile – Price Band System* from the facts of this dispute. In that dispute, the fact that Chile's price band system had been a "cornerstone of its agricultural policy for almost 20 years" led the arbitrator to find that it was so "fundamentally integrated"[163] into the policies of Chile that its "unique role and impact" on Chilean society was taken into account as a relevant circumstance. In contrast, Colombia's indicative prices and ports of entry measures have been adopted in the course of the last five years.[164] Thus, in the light of the "recent vintage" of those measures, Panama submits that Colombia has not demonstrated their "unique role and impact" on Colombian society.[165]

(d) Developing Country Status

54. Finally, Panama submits that the Arbitrator should not take into account Colombia's status as a developing country in determining the length of time allowed for implementation.[166] Panama also emphasizes that, although the arbitrator in *Chile – Price Band System* recognized that Chile may have faced obstacles as a developing country in its implementation of the recommendations and rulings of the DSB, Argentina similarly faced "hardship" as long as the WTO-inconsistent measure was maintained, and therefore decided not to take Chile's developing country status into consideration.[167] Thus, Panama suggests that Colombia has not demonstrated that it is in a "dire economic or financial" situation that would justify an extended period of time for implementation.[168] Rather, it is Panama's own status as a developing country being adversely affected by WTO-inconsistent measures for the last five years that should be taken into account.

55. In the light of the foregoing, Panama requests that I determine the reasonable period of time for implementation of the recommendations and rulings of the DSB in this dispute to be 4 months and 19 days from the adoption by the DSB of the Panel Report, to expire on 9 October 2009.

---

[163]Panama's submission, para. 92 (referring to Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, paras. 46 and 48).

[164]Panama's submission, para. 92 (referring to Colombia's submission, para. 104).

[165]Panama's submission, para. 92.

[166]Panama's submission, para. 93 (quoting Award of the Arbitrator, *Indonesia – Autos (Article 21.3(c))*, para. 24). Panama argues that, in *Indonesia – Autos*, the particular circumstance that led the arbitrator to grant additional time for implementation was the "dire economic and financial situation" faced by Indonesia, rather than its developing country status.

[167]Panama's submission, para. 94 (quoting Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 56).

[168]Panama's submission, para. 95.

56. Alternatively, Panama requests that I determine two separate reasonable periods of time for implementation of the recommendations and rulings of the DSB: a longer period of time for the indicative prices measure, considering that an amendment to Decree 2685/1999 may require Presidential action and review by the Triple A Committee; and a shorter period of time for the ports of entry measure, given that Resolution 7373/2007 and subsequent extensions may be modified exclusively by the DIAN through ordinary administrative procedures.[169]

III. Reasonable Period of Time

A. *Preliminary Matters*

1. Procedural Issue

57. Before turning to the question of the reasonable period of time for implementation, I address a preliminary issue raised during the oral hearing in these arbitration proceedings. Attached to the written version of its opening statement, Colombia submitted Exhibits COL-6 to COL-11, which contained evidence that had not been previously submitted with its written submission. Panama objected to the introduction of such evidence at the oral hearing stage. Panama argued that the introduction of new evidence at such a late stage in the proceedings could potentially infringe upon its due process rights, for it did not have adequate time to review and comment on such evidence. Colombia responded that the evidence submitted at the oral hearing was intended to rebut allegations made by Panama in its written submission, and therefore did not raise any due process concerns.

58. Upon review of the evidence submitted by Colombia during the oral hearing, I determined that Exhibit COL-6 contained a chart that outlined, in summarized fashion, the particular steps proposed by Colombia in its written submission for implementation of the recommendations and rulings of the DSB. A similar chart had been submitted by Panama in paragraph 37 of its written submission. I therefore decided to admit the chart contained in Exhibit COL-6 as evidence in these proceedings. I did not consider it necessary to rely on the evidence contained in Exhibits COL-7 to COL-11 in reaching my determination.

59. Also during the oral hearing, I asked Colombia to produce evidence in support of its contention that an Inter-Institutional Working Group *(Grupo de Trabajo Interinstitucional)* had been established on 17 April 2009 with the objective of examining different alternatives for the implementation of the recommendations and rulings of the DSB. In response, Colombia submitted an

[169]Panama's submission, paras. 99-101 (referring to Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 41). Panama notes that the arbitrator in that case discussed whether more than one reasonable period of time could be determined under Article 21.3(c), while ultimately not deciding that question.

Ayuda Memoria produced by the Ministry of Trade, Industry and Tourism of Colombia, which contained the minutes of the first meeting of the Working Group, and a list of attendees. I decided to admit this document as relevant evidence in these proceedings.

2. Mandate of the Arbitrator

60. The Panel Report in this dispute was adopted by the DSB on 20 May 2009. On 19 June 2009, Colombia informed the DSB of its intention to comply with the recommendations and rulings, but stated that it would need a reasonable period of time in which to do so.[170] As the parties failed to agree on a period of time for implementation, the Director-General consulted with the parties and appointed me as Arbitrator on 30 July 2009 to determine a reasonable period of time. I accepted the appointment on 3 August 2009.

61. Article 21.3 of the DSU establishes that, if it is "impracticable" for a Member to comply "immediately" with the recommendations and rulings of the DSB, then that Member "shall have a reasonable period of time in which to do so". My task as Arbitrator in these proceedings is to determine such reasonable period of time, taking due account of the relevant provisions of the DSU and, specifically, of the following directions set forth in Article 21.3:

> ... The reasonable period of time shall be:
>
> (c) a period of time determined through binding arbitration .... In such arbitration, a guideline for the arbitrator should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances. (footnotes omitted)

62. I am mindful of the context in which Article 21.3(c) appears. Article 21.1 of the DSU provides that "prompt compliance" is essential for the effective resolution of WTO disputes. Furthermore, the introductory paragraph of Article 21.3 indicates that a "reasonable period of time" for implementation shall be available only if "it is impracticable to comply immediately" with the recommendations and rulings of the DSB. I agree with the arbitrator in *EC – Hormones* that these contextual elements suggest that the "reasonable period of time" within the meaning of Article 21.3 of the DSU "should be the shortest period possible within the legal system of the [implementing] Member."[171]

[170]WT/DSB/M/270, para. 51.
[171]Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 26.

63. It is generally accepted that my mandate in these Article 21.3(c) proceedings is limited to determining the "reasonable period of time" for implementation in the underlying WTO dispute. In fulfilling this limited mandate, I acknowledge that the implementing Member has a measure of discretion in selecting the means of implementation that it deems most appropriate. Like previous arbitrators before me, I consider that my mandate relates to the *time* by when the implementing Member must achieve compliance, not to the *manner* in which that Member achieves compliance.[172] Yet, *when* a Member must comply cannot be determined in isolation from the chosen means of implementation. In order "to determine *when* a Member must comply, it may be necessary to consider *how* a Member proposes to do so."[173] Thus, in making my determination under Article 21.3(c), the means of implementation available to the Member concerned is a relevant consideration.[174]

64. While an implementing Member has discretion in selecting the means of implementation, this discretion is not "an unfettered right to choose any method of implementation".[175] In my view, implementation of the recommendations and rulings of the DSB in this case is an "obligation of result", and therefore the means of implementation chosen must be apt in form, nature, and content to effect compliance, and should otherwise be consistent with the covered agreements.[176] Thus, although I am mindful that it falls within the scope of Article 21.5 proceedings to assess whether the measures eventually taken to comply are WTO-consistent, in making my determination under Article 21.3(c) I must consider "whether the implementing action falls within the range of permissible actions that can be taken in order to implement the DSB's recommendations and rulings."[177] Moreover, I agree with the arbitrator in *EC – Export Subsidies on Sugar* that "the chosen method must be such that it could be implemented within a reasonable period of time in accordance with the guidelines contained in

[172]See Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 41; Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 47; Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 26; Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 49; and Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, para. 41.

[173]Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 26. (original emphasis)

[174]Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 27.

[175]Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 69.

[176]See Award of the Arbitrator, *EC – Hormones (Article 21.3(c))*, para. 38. See also Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 41; Award of Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48; Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 25 (referring to Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 49, in turn referring to Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, paras. 41-43; Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 32; Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 30; Award of the Arbitrator, *US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c))*, para. 26; Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 33; and Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 69).

[177]Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 27.

Article 21.3(c)."[178] In addition, while the implementing Member is free to initiate wider reforms of its municipal law in the process of implementing of the DSB's recommendations and rulings, such objectives do not justify a longer implementation period. My determination as to the reasonable period of time for implementation of these recommendations and rulings must focus on the shortest period possible within the legal system of the implementing Member to bring the particular measures found to be inconsistent into conformity with its WTO obligations.[179]

65. As other arbitrators in the past, I also consider that the implementing Member is expected to use whatever flexibility is available within its legal system to promptly implement the recommendations and rulings of the DSB.[180] This is justified by the importance of fulfilling the obligation to comply immediately with the recommendations and rulings of the DSB, which have established that certain measures are inconsistent with a Member's WTO obligations. However, this does not necessarily include recourse to "extraordinary" procedures.[181]

66. Further, I note that the parties have offered diverging views on the allocation of the burden of proof under Article 21.3(c) of the DSU. Colombia argues that it was incumbent upon Panama, as the party requesting deviation from the 15-month guideline provided in Article 21.3(c), to demonstrate the "particular circumstances" justifying a shorter period of time for implementation.[182] Panama responds that Colombia, as the implementing Member, bears the burden of proving that the period of time it requests for implementation is "reasonable".[183]

67. I am guided by previous arbitrators' awards that place the burden on the implementing Member to demonstrate that, if immediate compliance is impracticable, the period of time it proposes constitutes a "reasonable period of time".[184] However, this does not absolve the other Member from

[178]Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 69.
[179]See Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 31.
[180]See Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 42; Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48; Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 25 (referring to Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 49, in turn referring to Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 39; Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 36; and Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 64).
[181]See Award of the Arbitrator, *US – Stainless Steel (Mexico) (Article 21.3(c))*, para. 42 (referring to Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48, in turn referring to Award of the Arbitrator, *Japan – DRAMs (Korea)*, para. 25; Award of the Arbitrator, *EC – Chicken Cuts*, para. 49; Award of the Arbitrator, *Korea – Alcoholic Beverages (Article 21.3(c))*, para. 42; Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 51; and Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 74).
[182]Colombia's submission, para. 69.
[183]Panama's submission, para. 27.
[184]See Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 28 (referring to Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, para. 47; and Award of the Arbitrator, *US – 1916 Act (Article 21.3(c))*, para. 33).

producing evidence in support of its contention that the period of time requested by the implementing Member is not "reasonable", and a shorter period of time for implementation is warranted.

3. The Measures Found to be Inconsistent by the Panel

68. For the purposes of these Article 21.3(c) arbitration proceedings, I refer to the relevant findings of the Panel:

- Article 128.5(e) of Decree 2685/1999, Article 172.7 of Resolution 4240/2000, as well as various Resolutions establishing indicative prices[185], by mandating the use of indicative prices for customs valuations purposes, are inconsistent "as such" with the obligation to apply, in a sequential manner, the methods of valuation provided in Articles 1, 2, 3, 5, and 6 of the *Agreement on Customs Valuation*[186];

- Article 128.5(e) of Decree 2685/1999, Article 172.7 of Resolution 4240/2000, as well as various Resolutions establishing indicative prices, by mandating the use of the higher of two values, or a minimum price, as the customs value of subject goods, are inconsistent "as such" with Articles 7.2(b) and 7.2(f) of the *Agreement on Customs Valuation*[187]; and

- Resolution 7373/2007, as amended by Resolution 7637/2007[188] (the "ports of entry measure") is inconsistent with Article I:1, the first and second sentences of Article V:2, the first sentence of Article V:6, and Article XI:1 of the GATT 1994.[189]

69. The Panel further rejected Colombia's defence that the ports of entry measure was justified under Article XX(d) of the GATT 1994 as a measure necessary to secure compliance with Colombia's customs laws and regulations.[190] Although the Panel considered that the ports of entry measure was designed to secure compliance with Decree 2685/1999 and Resolution 4240/2000[191], and recognized the importance of combating under-invoicing and money-laundering associated with drug

[185]Resolution No. 7510/2007, as modified by Resolution No. 11412/2007; Resolution No. 7511/2007; Resolution No. 7509/2007, as modified by Resolution No. 11414/2007; Resolution No. 7512/2007, as modified by Resolution No. 11415/2007 and Resolution No. 7513/2007. (See Panel Report, para. 7.36) During the course of the oral hearing, the parties confirmed that some of the measures establishing indicative prices had been replaced by Resolutions 8812/2008 (Arbitration Exhibit PAN-3) and 5516/2009 (Arbitration Exhibit PAN-4).

[186]Panel Report, paras. 7.152 and 8.1.

[187]Panel Report, paras. 7.153 and 8.2.

[188]Resolution 7373/2007 was extended until 30 June 2009 by Resolution 1749/2008 (Arbitration Exhibit PAN-5) and until 31 December 2009 by Resolution 6816/2009 (Arbitration Exhibit PAN-6).

[189]Panel Report, para. 8.5.

[190]Panel Report, para. 8.7.

[191]Panel Report, para. 7.543.

trafficking[192], the Panel found that Colombia had not established that the ports of entry measure contributed to combating customs fraud and contraband in Colombia.[193]

70. The Panel Report was issued to the parties on 15 April 2009[194], was circulated to WTO Members on 27 April 2009, and was adopted by the DSB on 20 May 2009. The Panel recommended that Colombia brings its measures into conformity with its obligations under the *Agreement on Customs Valuation* and the GATT 1994.[195]

B. *Factors Affecting the Determination of the Reasonable Period of Time under Article 21.3(c) of the DSU*

1. Proposed Means of Implementation

(a) Colombia

71. With respect to the use of *indicative prices* for customs valuation purposes, Colombia proposes to implement the DSB's recommendations and rulings under the *Agreement on Customs Valuation* by "revising the design and implementation of its customs control system based on indicative prices to more clearly separate customs valuation from the legitimate right to exercise customs control."[196] According to Colombia, this is likely to incorporate "a revised system of customs control based on database prices that will not serve as the basis for customs valuation."[197] Colombia argues that the process for modifying its customs control system would entail the following sequential steps:

- identification and evaluation of whether and how various provisions of Colombia's laws, regulations, and administrative orders may be impacted by the Panel's rulings and by the amendment of the indicative prices mechanism.[198] Colombia estimates that this step could be completed in three months;

[192]Panel Report, para. 7.566.
[193]Panel Report, paras. 7.585, 7.588, and 7.618. In the light of these findings, the Panel did not address the introductory clause of Article XX of the GATT 1994.
[194]Panel Report, para. 1.8. I also note that the Panel issued its Interim Report to the parties on 4 March 2009.
[195]Panel Report, para. 8.10.
[196]Colombia's submission, para. 28.
[197]Colombia's submission, para. 28.
[198]Colombia's submission, paras 30-32.

- examination of possible alternatives to reform Colombia's customs control system[199], consultations[200], and elaboration of a specific drafting proposal to amend Decree 2685/1999 and Resolution 4240/2000. The elaboration of a specific drafting proposal would be subject to the DIAN's internal decision-making process, pursuant to Article 2 of Resolution 457/2008 and Administrative Order 0002 of 08 May 2009 (six to nine months)[201];

- examination of revised customs procedures by the Department of Public Administration, pursuant to Decree 4669/2005 (one to two months)[202];

- examination of proposed amendments to Decree 2685/1999 and Resolution 4240/2000 by the *Comité de Asuntos Aduaneros, Arancelarios y de Comercio Exterior* (the "Triple A Committee") (Decree 3303/2006), the Ministry of Trade, Industry and Tourism (Decree 210/2003) and the Ministry of Finance (Decree 4646/2006) (two to four months)[203];

- review of the amendments to Decree 2685/1999 and Resolution 4240/2000 by the Legal Office of the President, signature by the President, and publication of the amendments in the Official Gazette *(Diario Oficial)*[204] (one month);

- amendment of specific Resolutions establishing indicative prices (three months)[205];

[199]According to Colombia, this step includes: analysis of various international norms on customs valuation and customs control, including the experience of countries facing similar problems; examination of how to administer a customs control system based on cash deposits; examination of which "other appropriate instrument" could be imposed as a guarantee mechanism under Article 13 of the *Agreement on Customs Valuation* and Article 51(1) of Andean Community Resolution 846, implementing Andean Community Decision 571; examination of WTO-consistency of different approaches; examination of the World Customs Organization ("WCO") practices on customs valuation, control and enforcement; and examination of whether a generalized system of an advance import declaration can be designed. (Colombia's submission, paras. 33-35)

[200]Colombia argues that the constitutional principle of transparency in government administration provided in Article 209 of the Constitution of Colombia requires that the public and private sectors are consulted on a new system of customs control. (Colombia's submission, para. 36)

[201]According to Colombia, the DIAN's internal decision-making process consists of the following steps: preparation of an initial draft of amended text; review of its legal and technical correctness; review of proposed parallel changes in respect of related legal norms; exchange of comments and suggestions; and approval and inclusion of corresponding adjustments into a new final proposal. Colombia argues that this process involves several departments of the DIAN, including the Technical Sub-Directorate *(Subdirección de Gestión Técnica Aduanera)*, the Sub-Directorate for External Trade *(Sub-Dirección de Gestión de Comercio Exterior)*, the Directorate for Legal Affairs *(Dirección de Gestión Juridica)*, the Directorate for Customs Management *(Dirección de Gestión de Aduanas)* and the General Directorate *(Dirección General)*. (Colombia's submission, paras. 86 and 87)

[202]Colombia's submission, para. 88 and Arbitration Exhibit COL-4.

[203]Colombia's submission, paras. 89 and 90.

[204]Colombia's submission, paras. 91 and 92 and Arbitration Exhibit COL-6.

[205]Colombia's submission, para. 92.

- implementation of the new measure into Colombia's computerized system of customs administration (four months)[206]; and

- internal training of customs administration officials (two months).[207]

72. In addition to the steps described above, Colombia intends to reform the provisions of its Commercial Code dealing with customs securities in order to ensure that bank or insurance guarantees are effectively available to importers in the context of its revised customs control system. According to Colombia, the process for amending its Commercial Code would include the following stages: development of reasons for amending the law; drafting of the actual reform proposal; transmission of the bill to the President's Legal Office; review by the Legal Office of the President and other Ministries; amendments of the bill in the light of comments received; renewed transmission of the revised bill to the relevant Ministries; and review by the Triple A Committee.[208] Thereafter, a legislative process composed of four successive stages would be initiated before the Colombian Parliament.[209] Colombia estimates that the amendment of its customs securities laws would take between 12 and 24 months.

73. With respect to the *ports of entry measure*, Colombia proposes to implement the Panel's findings under the GATT 1994 by amending its measure in a manner that does not treat imports arriving from Panama differently from those arriving directly from the country of origin, while at the same time ensuring the enforcement of its customs laws. Towards this end, Colombia contemplates incorporating into its revised measure some "essential aspects" of the ports of entry measure, such as the advance import declaration, the exemption for goods in transit, and possibly certain limitations on the ports of entry in a measure of "generalized application".[210]

74. Colombia argues that the process for revising its ports of entry measure would encompass the following steps:

- a preliminary evaluation stage, consisting of an evaluation of the Panel's findings and the impact of their implementation on different laws and regulations, as well as a comparative

[206]Colombia's submission, para. 39. Colombia argues that this particular stage is required by Article 5 of Decree 2685/1999 and by Resolution 457/2008.
[207]Colombia's submission, para. 40.
[208]Colombia's submission, para. 44.
[209]Colombia's submission, para. 44 (referring to *El Congreso de Colombia, Ley 5 de 1992 (junio 17), Diario Oficial No. 40.483 de 18 de junio de 1992* (Law 5 of 1992)).
[210]Colombia's submission, para. 47.

study of different methods for securing customs control, in the light of the WTO agreements and relevant guidelines, decisions, and recommendations of the WCO (four to six months)[211];

- definition and development of a mechanism to substitute the ports of entry measure in consultation with the public and private sectors.[212] The elaboration of a specific drafting proposal would be subject to the DIAN's internal decision-making process, pursuant to Article 2 of Resolution 457/2008 and Administrative Order 0002 of 08 May 2009 (six months)[213];

- examination of proposed new procedures by the Department of Public Administration, pursuant to Decree 4669/2005 (one to two months)[214];

- examination of the proposed new mechanism by the Triple A Committee (Decree 3303/2006), the Ministry of Trade, Industry and Tourism (Decree 210/2003), and the Ministry of Finance (Decree 4646/2006) (two to four months)[215]; and

- signature by the President, review by the Legal Office of the President, and publication of the amendments in the *Diario Oficial* (one month)[216].

75. At the oral hearing, Colombia explained that, although in its estimation the implementation of the recommendations and rulings of the DSB could take any time between 15 and 28 months, it was willing to use all flexibility available within its domestic legal system to achieve compliance within the 15-month guideline provided in Article 21.3(c) of the DSU.

(b) Panama

76. Panama argues that "any implementing action other than withdrawal of the measure would fall outside the permissible range of actions for implementation."[217] Panama recalls that withdrawal of the inconsistent measures is the preferred means of implementation under Article 3.7 of the DSU. Panama acknowledges that Colombia has discretion in selecting the means of implementation, but

[211]Colombia's submission, paras. 49-51.
[212]According to Colombia, this stage involves: an integrated study into port and airport security; review of the potential benefits of generalizing the advance import declaration; review of Colombia's transit regime to ensure compliance with Colombia's international obligations; and consideration of the different stages of development and technical capacity of customs authorities and related socio-economic conditions. (Colombia's submission, paras. 52-54)
[213]For a description of the DIAN's internal decision-making process, see *supra*, footnote 201 to paragraph 71
[214]Colombia's submission, para. 88 and Arbitration Exhibits COL-4 and COL-6.
[215]Colombia's submission, paras. 89 and 90 and Arbitration Exhibit COL-6.
[216]Colombia's submission, para. 91 and Arbitration Exhibit COL-6.
[217]Panama's submission, para. 46.

maintains that Colombia's proposed means of implementation do not fall within the "range of permissible actions that can be taken in order to implement the DSB's recommendations and rulings".[218] Panama reasons that any measure that replaces the payment of duties under Article 128.5 e) of Decree 2685/1999 with a compulsory guarantee system would be inconsistent with Article 13 of the *Agreement on Customs Valuation.* Similarly, Panama contends that any measure that maintains any restrictions on the ports of entry would fall afoul of Article XI of the GATT 1994. Panama underscores that similar measures were withdrawn by Colombia in 2006 within a very short period of time, and therefore considers that one week following the issuance of this Award, that is, 4 months and 19 days from the date of adoption of the Panel Report, would be sufficient for Colombia to complete implementation in this case.

(c) Analysis

77. Initially, I observe that Article 3.7 of the DSU provides that "the first objective of the dispute settlement mechanism is usually to secure withdrawal" of the WTO-inconsistent measures. Hence, I agree with Panama that withdrawal of the inconsistent measures is the "preferred" means of implementation and certainly falls within the range of permissible actions. However, I do not exclude that Colombia could bring itself into conformity with the recommendations and rulings of the DSB by modifying both the indicative prices mechanism and the ports of entry measure in a manner that rectifies the particular WTO-inconsistencies identified by the Panel. In my view, modification of both the indicative prices mechanism and the ports of entry measure is within the "range of permissible actions"[219] available for Colombia to implement the recommendations and rulings of the DSB in this dispute. I draw guidance from the arbitrator in *US – Offset Act (Byrd Amendment)*, who stated that the implementing Member "may choose either to withdraw or modify"[220] the WTO-inconsistent measure in exercising its discretion to select the appropriate means of implementation. In addition, the question of the WTO-consistency of measures eventually taken by Colombia to comply with the recommendations and rulings of the DSB is beyond my mandate in these proceedings, and would fall within the purview of Article 21.5 proceedings.

78. Accordingly, I make my determination on the basis of the shortest period of time possible within Colombia's domestic legal system to modify the indicative prices mechanism and the ports of entry measure so as to bring them into conformity with its WTO obligations. In so doing, I follow the

[218]Panama's submission, para. 46 (quoting Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*, para. 48, in turn quoting Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 27).

[219]Award of the Arbitrator, *Japan – DRAMs (Korea) (Article 21.3(c))*, para. 27.

[220]Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 50. (emphasis omitted)

guidance of the arbitrator in *Canada – Pharmaceutical Patents* that "the legally binding, as opposed to the discretionary, nature of the component steps leading to implementation should be taken into account"[221], and have weighed each of the component steps and timeframes proposed by Colombia accordingly.

79. In making my determination, I also pay heed to the statement of the arbitrator in *Chile – Price Band System* that the implementing Member must "at the very least" promptly take concrete steps towards implementation from the date of adoption of the panel or Appellate Body reports by the DSB.[222] Accordingly, I should take into account any action or inaction by Colombia in the period of time comprised between the date of adoption of the Panel Report by the DSB and the initiation of these arbitration proceedings when determining the reasonable period of time for implementation.

80. Since the adoption of the Panel Report, Colombia has established an Inter-Institutional Working Group *(Grupo de Trabajo Interinstitucional)*, composed of representatives of the Ministry of Trade, Industry and Tourism, and of the DIAN, to evaluate how to implement the recommendations and rulings of the DSB. This initiative, in my opinion, goes beyond mere "internal discussions"[223], as argued by Panama, insofar as it establishes an institutional framework responsible for proposing and coordinating an administrative plan of action for implementation. As noted by a previous arbitrator, "consultations within governmental agencies are typically a concomitant of lawmaking in contemporary polities"[224], and therefore should be taken into account when fixing the reasonable period of time for implementation. Therefore, I consider the work of such Inter-Institutional Working Group relevant to my determination.

81. I note further that during the oral hearing Colombia informed that the Inter-Institutional Working Group has concluded its work. I am therefore satisfied that Colombia has completed all preliminary evaluation stages outlined in its implementation proposal[225], and therefore is expected to speedily proceed with the legal process necessary to bring the measures found to be inconsistent into conformity.

---

[221]Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, para. 51. (emphasis omitted)

[222]Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 43. See also Award of the Arbitrator, *US – Section 110(5) Copyright Act (Article 21.3(c))*, para. 46.

[223]Panama's submission, para. 42 (quoting Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 66).

[224]Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 42.

[225]This includes the assessment of domestic laws impacted by implementation of the Panel's findings, comparative studies, studies of WTO-consistency of possible alternatives, WCO practices, and consistency of implementing measures with Andean Community law.

82. Turning to the legal process necessary to modify the measures found to be inconsistent by the Panel, Colombia has established to my satisfaction that a number of the component steps for implementation seem to be administratively mandated. Specifically, Colombia has shown that the process for modifying both the indicative prices mechanism and the ports of entry measure consists of: (i) an internal decision-making process within the DIAN, pursuant to Resolution 457/2008 and Administrative Order 0002[226]; (ii) review of any new customs procedures by the Department of Public Administration, pursuant to Article 2 of Decree 4669/2005[227]; (iii) review of new measures by the Triple A Committee, the Ministry of Trade, Industry and Tourism, and the Ministry of Finance, pursuant to Decrees 3303/2006, 210/2003, and 4646/2006[228]; and (iv) signature by the President of Colombia and publication in the *Diario Oficial*.[229]

83. However, I also observe that the various regulations brought to the fore by Colombia do not seem to prescribe minimum mandatory timeframes, and when they do, such timeframes are rather short. For example, as Panama points out, Article 2, paragraph 3 of Resolution 457/2008 establishes a period of 13 working days for the "formalization of procedures" within the DIAN, but otherwise does not seem to set minimum periods for the DIAN's decision-making process. Likewise, Colombia has not established that Decrees 4669/2005, 210/2003, and 4646/2006 provide for specific time-limits for the reviews of the Department of Public Administration, the Ministry of Trade, Industry and Tourism, and the Ministry of Finance, respectively. Similarly, Articles 3 and 4 of Decree 3303/2006 establish that the Triple A Committee can meet between regular sessions at any time, within 5 days of a meeting being called by its President.[230] Therefore, I consider that Colombia's administrative decision-making process is "characterized by a considerable degree of flexibility"[231], and expect Colombia to make use of such flexibility in order to ensure prompt compliance with the recommendations and rulings of the DSB.

84. In addition, some of the steps outlined by Colombia seem duplicative, and many could be pursued in parallel, to the extent that they are not necessarily sequential. For example, a careful review of Article 2 of Decree 3303/2006 reveals that representatives of the Ministry of Trade, Industry and Tourism and the Ministry of Finance, as well as the Director-General of the DIAN, are members of the Triple A Committee. This, in my view, significantly reduces the time necessary to seek additional review of the implementing measures by those Ministries, whose views are likely to

[226]Colombia's submission, paras. 86 and 87 and Arbitration Exhibits COL-1 and COL-2.
[227]Colombia's submission, para 88 (referring to Arbitration Exhibit COL-4).
[228]Colombia's submission, paras. 89 and 90 (referring to Arbitration Exhibit COL-5). See also Arbitration Exhibit PAN-11.
[229]Colombia's submission, paras. 91 and 92.
[230]In this respect, I do not consider that convening a meeting of the Triple A Committee between regular quarterly sessions amounts to recourse to "extraordinary procedures".
[231]Award of the Arbitrator, *US – 1916 Act (Article 21.3(c))*, para. 39.

be taken into account within the ambit of the Triple A Committee. Similarly, I consider that additional time will not be necessary for the elaboration of specific DIAN Resolutions modifying the existing indicative prices mechanism, because such amendments could be prepared *in tandem* with the reform of the underlying Decree 2685/1999 and of Resolution 4240/2000, and simply be enacted shortly after the publication of the amended measures in the *Diario Oficial*.

85. On the other hand, I am not convinced that a broad reform of numerous provisions of Colombia's Commercial Code concerning customs securities is relevant for my determination, as suggested by Colombia. It may well be the case that Colombia considers it desirable to reform its customs securities statutes in order to ensure that guarantees are effectively available in the context of its revised customs control system. However, the relevant recommendations and rulings of the DSB concern the use of indicative prices for customs valuation purposes and certain restrictions on ports of entry. I find the situation here analogous to the one faced by the arbitrator in *EC – Tariff Preferences,* where the European Communities proposed a wider reform of its Generalized System of Preferences ("GSP") scheme as part of its implementation of the recommendations and rulings of the DSB in that dispute.[232] In rejecting the relevance of such wider reform for his determination, the arbitrator held that his "determination as to the reasonable period of time for implementation ... must have regard only to the shortest period possible within the legal system of the European Communities to bring the Drug Arrangements into conformity with its WTO obligations."[233] Therefore, "[t]he mere fact that the European Communities ... decided to incorporate the task of implementation within the larger objective of reforming its overall GSP scheme [could not] lead to a determination of a shorter, or longer, reasonable period of time."[234]

86. Similarly, the mere fact that Colombia contemplates a wider reform of its customs securities statutes together with the implementation of the DSB's recommendations and rulings cannot lead to a determination of a longer period of time, insofar as the measures that have to be brought into conformity are the indicative prices mechanism and the ports of entry measure. In any event, even assuming that the reform of Colombia's statutory provisions on customs securities is relevant for my consideration, Colombia explained during the oral hearing that such legislative reforms can be enacted within the same timeframe estimated for the completion of the remainder of its regulatory and administrative implementing measures.

87. Finally, I do not attribute significance to steps such as the implementation of the revised measures into Colombia's computerized system of customs control and the training of DIAN officials

[232]See Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 29.
[233]Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 31.
[234]Award of the Arbitrator, *EC – Tariff Preferences (Article 21.3(c))*, para. 31.

to familiarize them with the revised customs control mechanism. These particular steps seem consequential, rather than pre-requisites, to the enactment of Colombia's modified measures. In this context, I concur with the statement of the arbitrator in *Canada – Pharmaceutical Patents* that "the determination of a 'reasonable period of time' must be a legal judgement based on an examination of relevant legal requirements"[235] for the enactment of the implementing measures. Colombia's component steps of incorporating its revised measures into its computerized system of customs control and the training of officials in the new system, are merely derivative, or consequential, upon the completion of the legal process necessary to the enactment of the implementing measures, and thus, in my view, do not justify a longer period of time for implementation.

2. Particular Circumstances

(a) Need for Legislative and Administrative Action

88. I turn to the specific "particular circumstances" that, according to Colombia, justify a reasonable period of time of "at least" 15 months to implement the recommendations and rulings of the DSB. Initially, Colombia argues that the implementation of the Panel's "as such" findings will require it to amend its laws and regulations and to issue new rules of general application. Referring to previous arbitrators, Colombia argues that its implementation will involve "legislative and regulatory decision making", which entails "setting new rules" and is therefore more time-consuming than "administrative decision-making", which simply involves applying existing regulations.[236]

89. Panama responds that Colombia has the flexibility to implement the recommendations and rulings of the DSB exclusively through administrative means. Panama notes that all the measures found by the Panel to be inconsistent with Colombia's WTO obligations are administrative acts issued by the Executive Branch of the Colombian Government. Therefore, Panama emphasizes that the authority to amend Decree 2685/1999, Resolution 4240/2000, and Resolution 7373/2007, as well as various Resolutions establishing indicative prices, rests with Colombia's administrative authorities.[237]

[235]Award of the Arbitrator, *Canada – Pharmaceutical Patents (Article 21.3(c))*, para. 52.

[236]Colombia's submission, para. 78 (referring to Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 35).

[237]According to Panama, the authority to modify Article 128.5 e) of Decree 2685/1999 rests with the President of Colombia, pursuant to paragraph 25 of Article 189 of Colombia's Constitution, having heard the views of the Triple A Committee; Paragraph 12 of Article 6 of Decree 4048/2008 confers upon the Director-General of the DIAN, the authority to amend Resolution 7373/2007 and Article 172.7 of Resolution 4240/2000; and paragraph 6 of Article 28 of Decree 4048/2008 grants the Sub-Directorate of the Customs Technical Management (*Subdirección de Gestión Técnica Aduanera*) the authority to modify various Resolutions establishing indicative prices. (Panama's submission, paras. 73, 76, 81, and 83)

Panama adds that Colombia's expedient repeal of similar measures following a mutually agreed solution reached with Panama on 31 October 2006 illustrates that Colombia can withdraw the measures at issue in this dispute almost immediately.

90. Initially, I agree with the distinction made by Colombia following the guidance of the arbitrator in *US – Gambling* that "[l]egislative action will, as a general rule, require more time than regulatory rulemaking, which in turn will normally need more time than implementation that can be achieved by means of an administrative decision."[238] Thus, in making my determination, I consider that legislative means are generally more time-consuming than regulatory rulemaking, which in turn is more lengthy than simple administrative action. In the light of the proposed means of implementation outlined by Colombia, it seems reasonable to assume that Colombia will have to engage in a certain degree of regulatory rulemaking in order to modify both its customs control system and its ports of entry measure. This action, in my view, may be more time-consuming than mere administrative decision on the basis of existing rules.

91. However, I am not persuaded that implementation of the recommendations and rulings of the DSB in this dispute will also require legislative action. The only action that according to Colombia would entail a legislative process is an amendment to the provisions of its Commercial Code dealing with custom securities. As noted earlier, I do not consider that this element of a broader reform of Colombia's customs control system can lead to the assessment of a longer period of time for implementation insofar as the recommendations and rulings of the DSB concern the use of indicative prices for customs valuation purposes and certain restrictions on ports of entry.

92. With the exception of the legislative process required for the amendment of Colombia's Commercial Code, all other implementing steps proposed by Colombia require regulatory or administrative rulemaking, in the sense that they can be accomplished solely by the Executive Branch of the Colombian Government.[239] Indeed, as Panama points out, the authority to amend the measures found to be inconsistent by the Panel rests either with the President of Colombia, under Article 189, paragraph 25, of Colombia's Political Constitution, or with various DIAN officials, pursuant to Decree 4048/2008. Accordingly, I consider that Colombia's implementation of the recommendations and rulings of the DSB can be accomplished in a shorter period of time than would have been necessary had recourse to legislative means been required.

[238]Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 35.

[239]For the distinction between legislative and administrative processes, see Award of the Arbitrator, *EC – Chicken Cuts (Article 21.3(c))*, para. 67.

93. During the oral hearing, Colombia argued that some of the measures found to be inconsistent by the Panel, particularly Decree 2685/1999, have the status of "*Leyes Marcos*" under municipal law. According to Colombia, such *Leyes Marcos* have the status of legislation under Colombian law and, for this reason, require a more time-consuming modification process. Although Decree 2685/1999 may have a certain status under Colombian law, I have not been persuaded that amendment of such *Leyes Marcos* cannot be accomplished by the Executive Branch. Indeed, Colombia has not argued that legislative action is required to amend Decree 2685/1999; rather, it has argued that Presidential action is required.

94. Moreover, I agree with Panama that the previous repeal of similar measures in 2006 demonstrates that Colombia retains considerable flexibility to implement the recommendations and rulings of the DSB exclusively through administrative means. Colombia is correct in arguing that the circumstances surrounding the previous repeal of similar measures were "fundamentally different"[240], insofar as the measures were withdrawn as a result of the execution of a Customs Cooperation Protocol between Colombia and Panama. In addition, as noted earlier, I agree with Colombia that implementation through modification—rather than withdrawal—of the measures at issue, is within the range of actions that can be taken to implement the recommendations and rulings of the DSB. At the same time, however, with the exception of the authority necessary to modify Decree 2685/1999, I consider that Panama has demonstrated that the legal authority to modify the measures found to be inconsistent by the Panel is not substantially different from the one used by Colombia to repeal similar measures in 2006.[241] For this reason, I attribute some significance to the previous repeal of similar measures in reaching my determination.[242]

(b) Complexity of Implementing Measures

95. Colombia argues further that the complexity of amending measures relating to customs control and enforcement is a "particular circumstance" that would justify a longer period of time for implementation. Colombia suggests that the field of anti-smuggling is heavily regulated by a series of "interdependent and overlapping"[243] regulations that may have to be modified as a result of its

[240]Colombia's submission, para. 61.

[241]Indeed, Colombia repealed similar measures in 2006 through Resolutions 12950/2006 and 12956/2006, and Resolution 13034/2006. These Resolutions were taken by various DIAN officials pursuant to the authority conferred upon them by Articles 23 and 19(i) of Decree 1071/1999. These provisions were replaced by paragraph 12 of Article 6 and paragraph 6 of Article 28 of Decree 4048/2008, which currently provide the DIAN's Director-General and Sub-Director of Customs Technical Management with the authority to regulate customs matters and modify reference prices. At the oral hearing, Colombia confirmed that these provisions serve as the current basis for the authority previously conferred on DIAN officials by Decree 1071/1999. (Panama's submission, paras. 75-84 and Arbitration Exhibits PAN-12 and PAN-13)

[242]In a similar vein, see Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 55.

[243]Colombia's submission, para. 95.

implementation. Colombia adds that the amendment of both the indicative prices mechanism and the ports of entry measure may impact the "entire anti-smuggling legal framework"[244], whilst its concurrent objective that the implementing measures secure customs control and enforcement render implementation particularly complex.

96. Panama disagrees with Colombia that the alleged complexity of measures relating to Colombia's customs control and enforcement constitutes a "particular circumstance" justifying a longer period of time for implementation. Panama considers that the measures "in and of themselves"[245] are not complex, nor is the process for amending them complex. For Panama, Colombia's arguments relate to the "contentiousness" of these measures in Colombia, a factor that several arbitrators have dismissed as a "particular circumstance" in their determination of the reasonable period of time.[246]

97. In response to questioning at the oral hearing, Colombia provided a list of the legal provisions that it considers may be impacted by its implementation of the recommendations and rulings of the DSB. This list consisted of several different provisions of Decree 2685/1999 and Resolution 4240/2000[247], as well as Resolution 7373/2007, as amended. In my view, the fact that a number of provisions in Decree 2685/1999 and Resolution 4240/2000 may be impacted by the amendment of the specific provisions found to be inconsistent by the Panel does not render implementation particularly complex. I am not persuaded that modifying different provisions of the same legal instruments cannot be done with the same legal process regardless of whether it concerns a few or many provisions of that legal instrument. To the contrary, the fact that amendments to the WTO-inconsistent measures may impact other provisions of the legal instruments in which they are contained seems to be part and parcel of any regulatory decision-making process.

98. Colombia has identified customs control and enforcement concerns in the areas of anti-smuggling, contraband, drug trafficking, and under-invoicing as an element that adds complexity to its implementation of the recommendations and rulings of the DSB.[248] Although I recognize, like the Panel, the importance of such legitimate objectives, Colombia has not identified which additional laws and regulations could be impacted by the amendments of the measures that have been found to be inconsistent with its WTO obligations, nor has Colombia sufficiently expounded the nature or

[244]Colombia's submission, para. 96.
[245]Panama's submission, para. 92.
[246]Panama's submission, para. 92 (referring to Award of the Arbitrator, *US – Offset Act (Byrd Amendment) (Article 21.3(c))*, para. 61; and Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 47).
[247]Colombia listed, *inter alia*, Articles 121, 237, 253, 254, 502, 502.1, and 548 of Decree 2685/1999, and Articles 170, 431.1, 431.2, 503, and 507 of Resolution 4240/2000.
[248]Colombia's submission, para. 93.

effect of that impact or interconnection. Absent specific demonstration that implementation would impact a "myriad of interconnected and overlapping laws"[249] concerning customs control and enforcement, I am not able to conclude that the implementation process would be as complex as Colombia suggests. Accordingly, I attach little significance to this element as a "particular circumstance" justifying a longer period of time for implementation.

(c) Importance of the Measure in the Domestic System

99. Colombia refers to the importance of the measures in its domestic legal system as a third "particular circumstance" justifying a longer period of time for implementation. According to Colombia, the Panel acknowledged the existence of a serious problem of contraband from Panama linked to money-laundering and drug trafficking, and recognized that under-invoicing and smuggling are "a relatively more important reality for Colombia than for many other countries".[250] For Colombia, the importance of ensuring that new measures address the complex economic, social, and political issues facing Colombia, and that such measures "are integrated with minimal disruption to the efficacy of the existing anti-smuggling regime"[251], justifies the assessment of a longer period of time for implementation.

100. Panama dismisses the importance of the indicative prices mechanism and the ports of entry measure in Colombia's domestic system as a "particular circumstance" justifying a longer period of time for implementation. Panama distinguishes the facts of this dispute from the facts in *Chile – Price Band System*, where the arbitrator found that the price band system was so "fundamentally integrated"[252] into the agricultural policies of Chile over a period of 20 years that its "unique role and impact" on Chilean society was taken into account as a "particular circumstance". In contrast, Colombia's indicative prices mechanism and the ports of entry measure have been adopted in the course of the last five years, and therefore Colombia has not demonstrated their "unique role and impact" on Colombian society.[253]

[249]Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 46.
[250]Colombia's submission, para. 104 (quoting Panel Report, para. 7.566).
[251]Colombia's submission, para. 106.
[252]Panama's submission, para. 92 (referring to Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 47).
[253]Panama's submission, para. 92.

101. At the outset, I recognize that combating under-invoicing, smuggling, contraband, and money-laundering associated with drug trafficking is of the utmost importance for Colombia. I recall that the Panel noted that "combating under-invoicing and money laundering associated with drug trafficking is a relatively more important reality for Colombia than for many other countries."[254] At the same time, I also note that the Panel was unable to conclude that the ports of entry measure contributed to combating customs fraud and contraband in Colombia.[255]

102. In support of its request for a longer period of time for implementation due to the importance of the measures at issue, Colombia relies on the award of the arbitrator in *Chile – Price Band System*, where the arbitrator considered that the importance of the price band system in Chilean society was a "particular circumstance" justifying a longer period of time for implementation. The arbitrator found that:

> ... the longstanding nature of the [price band system], its fundamental integration into the central agricultural policies of Chile, its price-determinative regulatory position in Chile's agricultural policy, and its intricacy, I find its unique role and impact on Chilean society is a relevant factor in my determination of the "reasonable period of time" for implementation.[256]

I find these considerations persuasive and consider it incumbent upon Colombia to demonstrate the "unique role and impact"[257] of the challenged measures in Colombia's customs control and enforcement regime in order to justify a longer period of time.

103. However, Colombia has not established in what way the indicative prices mechanism and the ports of entry measure operate as "essential pillars"[258] of the regulatory regime it adopted to combat under-invoicing, smuggling, and contraband. Even if this were the case, Colombia has not demonstrated how the relative importance of these measures in its overall customs control and enforcement framework for combating under-invoicing, smuggling, and contraband impact the implementing process in a manner that justifies the assessment of a longer reasonable period of time for implementation.

[254]Panel Report, para. 7.566.
[255]See Panel Report, paras. 7.588 and 7.618.
[256]Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 48.
[257]Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 48.
[258]Colombia's submission, para. 8.

(d) Developing Country Status

104. Finally, both Colombia and Panama argue that Article 21.2 of the DSU requires me to take into account their respective status as developing countries in determining the reasonable period of time for implementation. Colombia argues that its status as a "developing country affected by the global economic crisis, in a continuing fight against contraband-related money-laundering and drug-trafficking"[259] warrants the assessment of a longer reasonable period of time, whilst Panama's developing country status is irrelevant because Panama has not demonstrated it is currently experiencing "daunting financial woes".[260] In contrast, Panama considers that Colombia has not demonstrated that it is in a "dire economic or financial situation"[261] that would justify a longer period of time for implementation; instead, it is Panama's own status as a developing country adversely affected by WTO-inconsistent measures that should be taken into account.

105. Article 21.2 of the DSU provides:

> Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

106. I recognize that Colombia's developing country status might affect the time within which it can implement the recommendations and rulings of the DSB. However, like past arbitrators, I consider that Article 21.2 of the DSU directs arbitrators acting under Article 21.3(c) to pay "'[p]articular attention' to 'matters affecting the interests' of *both an implementing* and *complaining* developing country Member or Members"[262], given that the scope of this provision is not textually limited to either of these parties. For this reason, in a situation where both the implementing and the complaining Member are developing countries, the requirement provided in Article 21.2 is of little relevance, except if one party succeeds in demonstrating that it is more severely affected by problems related to its developing country status than the other party. In this case, I do not consider that either Colombia or Panama have demonstrated that the challenges they face as developing countries are relatively more severe than the ones faced by the other party.

107. For this reason, the developing country status of both parties has not swayed me to either a longer, or a shorter, "reasonable period of time".

---

[259]Colombia's submission, para. 113.

[260]Colombia's submission, para. 113 (quoting Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 56).

[261]Panama's submission, para. 95 (referring to Award of the Arbitrator, *Indonesia-Autos (Article 21.3(c))*, para. 24.

[262]Award of the Arbitrator, *EC – Export Subsidies on Sugar (Article 21.3(c))*, para. 99.

108. Finally, I note Panama's alternative request that I determine two separate "reasonable periods of time": a longer period of time for the indicative prices mechanism, considering that an amendment to Decree 2685/1999 may require Presidential action and review by the Triple A Committee; and a shorter period of time for the ports of entry measure, because Resolution 7373/2007 and subsequent extensions may be modified exclusively by the DIAN through ordinary administrative procedures.[263]

109. In *US – Gambling*, the arbitrator did not exclude the possibility that an arbitrator might be able to establish separate reasonable periods of time for separate measures.[264] Irrespective of whether Article 21.3(c) would permit me to establish two different reasonable periods of time for the two different measures at issue, I do not consider it appropriate, in this arbitration, to determine separate periods of time for bringing the indicative prices mechanism and the ports of entry measure into conformity.

IV. Award

110. In sum, I consider that Colombia has promptly initiated and already concluded preliminary evaluation steps in the 4 months and 12 days that have lapsed to date since the adoption of the recommendations and rulings of the DSB, and should have started speedily with the regulatory process necessary to modify its WTO-inconsistent measures.[265] In addition, I conclude that Colombia has sufficient flexibility to modify its indicative prices mechanism and its ports of entry measure, including review of its implementing measures by different organs of its Executive Branch, within a few months. Subsequently, a limited amount of time will be necessary for Colombia to procure the signature of its amending measures by the President, and their subsequent publication in the *Diario Oficial*. Further steps, such as the implementation of the amended measures in Colombia's computerized customs administration system and the training of DIAN officials, for the reasons stated above, do not justify the assessment of a longer reasonable period of time. On this basis, I consider that Colombia can implement the DSB's recommendations and rulings by the beginning of February 2010.

[263]Panama's submission, paras. 99-101.

[264]Award of the Arbitrator, *US – Gambling (Article 21.3(c))*, para. 41. In particular, the arbitrator was not persuaded that the mere use of the indefinite article "a" in the phrase "a reasonable period of time" suffices to establish definitively that an arbitrator is authorized to determine only a *single* reasonable period of time for implementation in a dispute. Nor was he persuaded that it is possible to determine two separate reasonable periods of time in respect of the *same* measure. (original emphasis)

[265]As I have noted earlier, any measure of a legislative character that Colombia may wish to adopt in order to amend its customs securities laws, although not strictly required to implement the recommendations and rulings of the DSB, can be accomplished in the same period of time estimated by Colombia for its regulatory amendment of the measures at issue (see *supra*, paras. 85, 86 and 91).

111. Accordingly, I determine that the reasonable period of time for Colombia to implement the recommendations and rulings of the DSB in this dispute is eight months and 15 days from the date of adoption of the Panel Report. The reasonable period of time will thus end on 4 February 2010.

Signed in the original at Geneva this 15th day of September 2009 by:

_____

Giorgio Sacerdoti
Arbitrator