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COLOMBIA – MEASURES RELATING TO THE IMPORTATION OF TEXTILES, APPAREL AND FOOTWEAR

ARB-2016-1/31

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

Award of the Arbitrator
Giorgio Sacerdoti

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ABBREVIATIONS USED IN THIS AWARD

Abbreviation	Description
Appellate Body Report	Appellate Body Report, ***Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear***, WT/DS461/AB/R
Colombia's Customs Tariff	Adopted pursuant to Decree No. 4927 of 26 December 2011, and subsequently amended by, for purposes of this dispute, Decrees No. 074 of 23 January 2013 and No. 456 of 28 February 2014
Decree No. 074	Decree of the President of the Republic of Colombia No. 074 of 23 January 2013, partially amending the Customs Tariff (Panel Exhibits PAN-2 and COL-16)
Decree No. 456	Decree of the President of the Republic of Colombia No. 456 of 28 February 2014, partially amending the Customs Tariff (Panel Exhibits PAN-3 and COL-17)
Decree No. 1609/2005	Decree of the President of the Republic of Colombia No. 1609 of 2015, amending the general guidelines for normative technique covered by heading 2 of Book 2, Part 1 of Decree No. 1081 of 2015 (Exhibit COL-ARB-7)
Decree No. 3303/2006	Decree of the President of the Republic of Colombia No. 3303 of 2006, establishing provisions in relation to the Committee on Customs, Tariff and International Trade Affairs (Exhibit COL-ARB-8)
Decree No. 4927	Decree of the President of the Republic of Colombia No. 4927 of 26 December 2011, adopting the Customs Tariff and other provisions (Panel Exhibit PAN-1, containing extracts of Chapters 61 through 64)
DIAN	*Dirección de Impuestos y Aduanas Nacionales* (National Customs and Excise Directorate)
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
f.o.b.	free on board
GATT 1994	General Agreement on Tariffs and Trade 1994
Law No. 1340/2009	Law No. 1340 of 2009, establishing rules for the protection of competition (Exhibit COL-ARB-9)
Law No. 1609/2013	Law No. 1609 of 2013, establishing general standards for governmental modification of tariffs, rates and other provisions concerning the customs regime (Exhibit COL-ARB-4)
Panel Report	Panel Report, ***Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear***, WT/DS461/R
Triple A Committee	Committee on Customs, Tariffs and International Trade Affairs
WTO	World Trade Organization

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EXHIBITS CITED IN THIS AWARD

Panel Exhibits	Description
PAN-1	*Decreto del Presidente de la República de Colombia No. 4927 del 26 de diciembre de 2011, por el cual se adopta el Arancel de Aduanas y otras disposiciones (extractos de los Capítulos 61-64)* (Decree of the President of the Republic of Colombia No. 4927 of 26 December 2011, adopting the Customs Tariff and other provisions) (extracts of Chapters 61 through 64))
PAN-2 / COL-16	*Decreto del Presidente de la República de Colombia No. 074 del 23 de enero de 2013, por el cual se modifica parcialmente el Arancel de Aduanas* (Decree of the President of the Republic of Colombia No. 074 of 23 January 2013, partially amending the Customs Tariff)
PAN-3 / COL-17	*Decreto del Presidente de la República de Colombia No. 456 del 28 de febrero de 2014, por el cual se modifica parcialmente el Arancel de Aduanas* (Decree of the President of the Republic of Colombia No. 456 of 28 February 2014, partially amending the Customs Tariff)

Arbitration Exhibits	Description
COL-ARB-1 (comprising Exhibits COL-ARB-1a through COL-ARB-1j)	Minutes and lists of attendees of the meetings of the group of officials selected by Colombia's Minister of Trade, Industry and Tourism held in June, July, and August 2016
COL-ARB-2	*Acta de Sesión Extraordinaria de la Comisión Interinstitucional de Lucha contra el Contrabando celebrada el 24 de agosto de 2016* (Minutes of the meeting of the Inter-institutional Commission against Smuggling held on 24 August 2016)
COL-ARB-3	*Título VII de la Constitución de Colombia, Capítulo 1, Artículo 189* (Title VII of the Colombian Constitution, Chapter 1, Article 189)
COL-ARB-4	*Ley No. 1609 de 2013, por la cual se dictan normas generales a las cuales debe sujetarse el gobierno para modificar los aranceles, tarifas y demás disposiciones concernientes al régimen de aduanas* (Law No. 1609 of 2013, establishing general standards for governmental modification of tariffs, rates and other provisions concerning the customs regime)
COL-ARB-5	*Ministerio de Comercio, Industria y Turismo, Informe en Materia de Defensa Jurídica Internacional relacionada con la problemática de contrabando y fraude aduanero, 1 de julio de 2016* (Ministry of Trade, Industry and Tourism, Report on International Legal Defence related to the smuggling and customs fraud problem, 1 July 2016)
COL-ARB-6	*Decreto del Presidente de la República de Colombia No. 4048 de 2008, por el cual se modifica la estructura de la Unidad Administrativa Especial – Dirección de Impuestos y Aduanas Nacionales, Artículo 3.12* (Decree of the President of the Republic of Colombia No. 4048 of 2008, modifying the structure of the Special Administrative Unit – National Customs and Excise Directorate, Article 3.12)
COL-ARB-7	*Decreto del Presidente de la República de Colombia No. 1609 de 2015, por el cual se modifican la directrices generales de técnica normativa de que trata el título 2 de la parte 1 del libro 2 del Decreto 1081 de 2015* (Decree of the President of the Republic of Colombia No. 1609 of 2015, amending the general guidelines for normative technique covered by heading 2 of Book 2, Part 1 of Decree No. 1081 of 2015)
COL-ARB-8	*Decreto del Presidente de la República de Colombia No. 3303 de 2006, por el cual se dictan disposiciones relacionadas con el Comité de Asuntos Aduaneros, Arancelarios y de Comercio Exterior* (Decree of the President of the Republic of Colombia No. 3303 of 2006, establishing provisions in relation to the Committee on Customs, Tariff and International Trade Affairs)

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Arbitration Exhibits	Description
COL-ARB-9	*Ley No. 1340 de 2009, por medio de la cual se dictan normas en materia de protección de la competencia* (Law No. 1340 of 2009, establishing rules for the protection of competition)
COL-ARB-14	*Resolución No. 00457 de 2008, por la cual se establecen los criterios para la definición de procedimientos dentro de los procesos de la Dirección de Impuestos y Aduanas Nacionales y para la estandarización y normalización de los documentos soporte de los mismos* (Resolution No. 00457 of 2008, establishing criteria for the definition of procedures within the processes of the National Customs and Excise Directorate and for the standardization and normalization of their support documents)
PAN-ARB-4	*Publicidad de proyectos de normatividad 2016 del Ministerio de Comercio, disponible al: <http://www.mincit.gov.co/publicaciones.php?id=37103>, visitado el 16 de septiembre de 2016* (List of draft regulations during 2016 from the Ministry of Trade, Industry and Tourism, available at: <http://www.mincit.gov.co/publicaciones.php?id=37103>, accessed 16 September 2016)
PAN-ARB-5	*Publicidad de proyectos de normatividad 2013-2014 del Ministerio de Comercio, disponible al: <http://www.mincit.gov.co/publicaciones.php?id=32381>, visitado el 16 de septiembre de 2016* (List of draft regulations during 2013 and 2014 from the Ministry of Trade, Industry and Tourism, available at: <http://www.mincit.gov.co/publicaciones.php?id=32381>, accessed 16 September 2016)
PAN-ARB-6	*Decreto del Presidente de la República No. 1704 de 28 de agosto de 2015, por el cual se modifica parcialmente el Arancel de Aduanas* (Decree of the President of the Republic No. 1704 of 28 August 2015, partially modifying the Customs Tariff)
PAN-ARB-7	*Decretos emitidos entre enero de 2013 y agosto de 2016 que modifican el Arancel de Aduanas de Colombia* (Decrees of the President of the Republic issued between January 2013 and August 2016 amending the Customs Tariff)

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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, p. 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, p. 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, DSR 2008:XX, p. 8581
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, p. 3
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, p. 1237
China – GOES (Article 21.3(c))	Award of the Arbitrator, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States – Arbitration under Article 21.3(c) of the DSU,* WT/DS414/12, 3 May 2013, DSR 2013:IV, p. 1495
Colombia – Ports of Entry (Article 21.3(c))	Award of the Arbitrator, *Colombia – Indicative Prices and Restrictions on Ports of Entry – Arbitration under Article 21.3(c) of the DSU*, WT/DS366/13, 2 October 2009, DSR 2009:IX, p. 3819
Colombia – Textiles	Appellate Body Report, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/AB/R and Add.1, adopted 22 June 2016
Colombia – Textiles	Panel Report, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/R and Add.1, adopted 22 June 2016, as modified by Appellate Body Report WT/DS461/AB/R
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, p. 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, p. 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, p. 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, p. 4313
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, DSR 2008:XX, p. 8553
Peru – Agricultural Products (Article 21.3(c))	Award of the Arbitrator, *Peru – Additional Duty on Imports of Certain Agricultural Products – Arbitration under Article 21.3(c) of the DSU*, WT/DS457/15, 16 December 2015
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, p. 2017
US – COOL (Article 21.3(c))	Award of the Arbitrator, *United States – Certain Country of Origin Labelling (COOL) Requirements – Arbitration under Article 21.3(c) of the DSU*, WT/DS384/24, WT/DS386/23, 4 December 2012, DSR 2012:XIII, p. 7173

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Short Title	Full Case title and citation
US – Countervailing Measures (China) (Article 21.3(c))	Award of the Arbitrator, *United States – Countervailing Duty Measures on Certain Products from China – Arbitration under Article 21.3(c) of the DSU*, WT/DS437/16, 9 October 2015
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, p. 1163
US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c))	Award of the Arbitrator, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Arbitration under Article 21.3(c) of the DSU*, WT/DS268/12, 7 June 2005, DSR 2005:XXIII, p. 11619
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, p. 657
US – Shrimp II (Viet Nam) (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam – Arbitration under Article 21.3(c) of the DSU*, WT/DS429/12, 15 December 2015
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, DSR 2008:XX, p. 8619

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WORLD TRADE ORGANIZATION
AWARD OF THE ARBITRATOR

Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear	ARB-2016-1/31
Parties:	Arbitrator:
Panama Colombia	Giorgio Sacerdoti

1 INTRODUCTION

1.1. On 22 June 2016, the Dispute Settlement Body (DSB) adopted the Appellate Body Report[1] and the Panel Report[2], as modified by the Appellate Body Report, in ***Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear***.[3] This dispute concerns the imposition by Colombia of a "compound tariff" on the importation of certain textiles, apparel, and footwear classified in Chapters 61 through 64 of Colombia's Customs Tariff.[4] The compound tariff was introduced by Decree of the President of the Republic of Colombia No. 074 of 23 January 2013[5] (Decree No. 074), which was subsequently "replace[d] and repeal[ed]"[6] by Decree of the President of the Republic of Colombia No. 456 of 28 February 2014[7] (Decree No. 456). Decree No. 456 entered into force on 30 March 2014 for a period of two years.[8] Decree No. 456 was extended, first, until 30 July 2016[9], and, subsequently, until 1 November 2016.[10] The Panel and the Appellate Body found that, in the instances identified in the Panel Report[11], the compound tariff exceeds the bound tariff rates in Colombia's Schedule of Concessions, and is therefore inconsistent with Article II:1(a) and (b) of the General Agreement on Tariffs and Trade 1994 (GATT 1994).[12]

1.2. At the meeting of the DSB held on 22 June 2016, Colombia informed of its intention to implement the DSB's recommendations and rulings in this dispute, and stated that it would need a reasonable period of time in which to do so.[13] By letter dated 8 August 2016, Panama informed the DSB that consultations with Colombia had not resulted in an agreement on the reasonable period of time for implementation pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). Panama therefore requested that this

[1] WT/DS461/AB/R.
[2] WT/DS461/R.
[3] WT/DS461/10.
[4] Panel Report, para. 2.1.
[5] Decree of the President of the Republic of Colombia No. 074 of 23 January 2013, partially amending the Customs Tariff (Panel Exhibits PAN-2 and COL-16). Decree No. 074 came into effect on 1 March 2013 and remained in force for one year. (Panel Report, para. 7.31)
[6] Panel Report, para. 7.37.
[7] Decree of the President of the Republic of Colombia No. 456 of 28 February 2014, partially amending the Customs Tariff (Panel Exhibits PAN-3 and COL-17).
[8] Panel Report, paras. 2.7 and 7.31. For the products concerned, Decree No. 456 modifies the Customs Tariff adopted pursuant to Decree No. 4927 of 26 December 2011, which establishes ordinary customs duties in Colombia. (See Decree of the President of the Republic of Colombia No. 4927 of 26 December 2011, adopting the Customs Tariff and other provisions (Panel Exhibit PAN-1, containing extracts of Chapters 61 through 64); see also Panel Report, para. 7.141)
[9] Appellate Body Report, para. 1.2.
[10] Colombia's response to questioning at the hearing. See also Panama's submission (English translation), para. 164. At the hearing in these arbitration proceedings, Colombia indicated that it intends to extend further the temporal scope of Decree No. 456 until the issuance of the implementing measures, due to the need to keep pursuing its policy objective of combating money laundering. (Colombia's response to questioning at the hearing) As of the date of the circulation of this Award, neither party has informed the Arbitrator as to the measures that Colombia may have adopted in respect of the compound tariff after the expiry of Decree No. 456 on 1 November 2016.
[11] See *infra*, para. 3.13.
[12] Appellate Body Report, para. 6.3.a and b; Panel Report, paras. 7.189, 7.192-7.194, and 8.2-8.4.
[13] WT/DS461/11. See also WT/DSB/M/380.

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period be determined through binding arbitration pursuant to Article 21.3(c) of the DSU. Panama and Colombia were unable to agree on an arbitrator within ten days of the referral of the matter to arbitration. Consequently, by letter dated 19 August 2016, Panama requested the Director-General of the World Trade Organization (WTO) to appoint an arbitrator pursuant to footnote 12 of Article 21.3(c) of the DSU. The Director-General appointed me as the Arbitrator on 30 August 2016, after consulting with the parties. The parties were informed of my acceptance of the appointment by letter dated 5 September 2016.

1.3. Colombia and Panama filed their written submissions, as well as executive summaries thereof, on 12 and 19 September 2016, respectively.[14] By joint letter dated 19 September 2016, Panama and Colombia agreed that any award issued by the arbitrator, including an award not made within 90 days after the date of adoption of the recommendations and rulings of the DSB, would be deemed to be an award of the arbitrator under Article 21.3(c) of the DSU for determining the reasonable period of time for Colombia to implement the recommendations and rulings of the DSB. The parties elaborated on their positions and answered my questions at a hearing held on 6 October 2016.

2 ARGUMENTS OF THE PARTIES

2.1. Annexes A and B to this Award contain the executive summaries of the parties' submissions. Details of the parties' arguments are further described, as appropriate, in the analysis set out in this Award.

3 REASONABLE PERIOD OF TIME

3.1. This section begins by setting out the mandate of the arbitrator under Article 21.3(c) of the DSU, in light of the text of the DSU and past awards under Article 21.3(c). It then addresses the measure to be brought into conformity with the recommendations and rulings of the DSB. Finally, it examines the parties' arguments on what constitutes a reasonable period of time for implementation in this dispute.

3.1 Mandate of the arbitrator under Article 21.3(c) of the DSU

3.2. Article 21.3 of the DSU provides, in relevant part:

> If it is impracticable to comply immediately with the recommendations and rulings [of the DSB], the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:
>
> ...
>
> (c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings. 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.[15]

3.3. Pursuant to Article 21.3(c) of the DSU, the mandate of the arbitrator is to determine the time period within which the implementing Member must comply with the recommendations and rulings of the DSB. Certain provisions of the DSU provide guidance regarding this mandate as arbitrator. Article 21.1 of the DSU provides that "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes". Moreover, the introductory clause of Article 21.3 of the DSU stipulates that a reasonable period of time for implementation shall be available "[i]f it is impracticable to comply immediately with the

[14] Panama filed its written submission and executive summary in Spanish. English translations of Panama's submission and executive summary were prepared by the WTO Languages Documentation and Information Management Division. In the original English version of this Award, we refer to these English translations.

[15] Fns 11-13 omitted.

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recommendations and rulings [of the DSB]". Therefore, consistent with previous arbitrations under Article 21.3(c), the reasonable period of time for implementation should, in principle, be the shortest period possible within the legal system of the implementing Member[16], in light of the "particular circumstances" of a dispute.[17]

3.4. In determining the reasonable period of time, the means of implementation chosen by the Member concerned is a relevant consideration. Indeed, the question of "***when*** a Member must comply cannot be determined in isolation from the means used for implementation."[18] In order "to determine ***when*** a Member must comply, it may be necessary to consider ***how*** a Member proposes to do so."[19] In this regard, it must be noted that previous awards under Article 21.3(c) have indicated that the implementing Member has a measure of discretion in choosing the means of implementation that it deems most appropriate.[20] While withdrawal of the inconsistent measure may be the preferred means to secure prompt compliance[21], modification of the measure is within the range of permissible actions available to the implementing Member.[22] The implementing Member's discretion, however, is not "an unfettered right to choose any method of implementation".[23] Rather, it is relevant to consider, in particular, "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".[24] Thus, the means of implementation chosen must be apt in form, nature, and content to bring the Member into compliance with its WTO obligations, in accordance with the guideline contained in Article 21.3(c) of the DSU.[25] At the same time, as noted by one previous arbitrator, "[o]bjectives that are extraneous to the recommendations and rulings of the DSB in the dispute concerned may not be included in the method if such inclusion were to prolong the implementation period."[26]

3.5. The findings by the panel and the Appellate Body in the underlying dispute offer relevant guidance for determining whether the proposed implementing measures are apt to achieve compliance, inasmuch as they elaborate on those aspects of the measure at issue that were found to breach WTO obligations. In this respect, these findings are also relevant to the determination of the time frame that is required for implementation.

3.6. At the same time, there are certain limitations on the mandate of the arbitrator under Article 21.3(c). Indeed, it is beyond the arbitrator's mandate to determine the consistency with the covered agreements of the measure that the Member envisages to adopt in order to comply with the DSB's recommendations and rulings. This question, should it arise, is to be addressed in proceedings conducted pursuant to Article 21.5 of the DSU.[27] Arbitration under Article 21.3(c) of

[16] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.5; ***China – GOES (Article 21.3(c))***, para. 3.3; ***EC – Hormones (Article 21.3(c))***, para. 26; and ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 25.

[17] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.5; and ***China – GOES (Article 21.3(c))***, para. 3.3.

[18] Award of the Arbitrator, ***US – COOL (Article 21.3(c))***, para. 68. (emphasis original)

[19] Award of the Arbitrator, ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 26. (emphasis original) See also Award of the Arbitrator, ***US – COOL (Article 21.3(c))***, para. 68.

[20] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.3; ***China – GOES (Article 21.3(c))***, para. 3.4; and ***Brazil – Retreaded Tyres (Article 21.3(c))***, para. 48.

[21] See Awards of the Arbitrators, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 77; ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 37; ***Australia – Salmon (Article 21.3(c))***, para. 30; and ***Argentina – Hides and Leather (Article 21.3(c))***, para. 40.

[22] See Awards of the Arbitrators, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 77; and ***US – COOL (Article 21.3(c))***, para. 77.

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

[24] Awards of the Arbitrators, ***US – Stainless Steel (Mexico) (Article 21.3(c))***, para. 42; ***Brazil – Retreaded Tyres (Article 21.3(c))***, para. 48; ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 27.

[25] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.3; ***China – GOES (Article 21.3(c))***, para. 3.2; and ***Colombia – Ports of Entry (Article 21.3(c))***, para. 64.

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

[27] See Awards of the Arbitrators, ***US – Shrimp II (Viet Nam) (Article 21.3(c))***, para. 3.3; ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.4; and ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 27.

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the DSU is limited to determining the period of time within which implementation of the recommendations and rulings of the DSB must occur.[28]

3.7. According to the last sentence of Article 21.3(c), the "particular circumstances" of a dispute may affect the calculation of the reasonable period of time, making it "shorter or longer".[29] In considering the "particular circumstances" under Article 21.3(c), arbitrators in past disputes have found that the complexity of the implementation process and the nature of the implementation steps are relevant to the determination of the reasonable period of time.[30] Previous arbitrators have also held that the implementing Member must utilize all of the flexibilities available within its legal system in order to implement the relevant recommendations and rulings of the DSB in the shortest period of time possible.[31] However, an implementing Member is not expected to utilize "extraordinary procedures" to bring its measure into compliance.[32] Moreover, Article 21.2 of the DSU directs an arbitrator to pay particular attention to "matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement". With reference to Article 21.2 of the DSU[33], previous arbitrators have recognized that, in determining the reasonable period of time under Article 21.3(c), an arbitrator should pay particular attention to matters affecting the interests of both the ***implementing*** and the ***complaining*** developing country Member or Members.[34]

3.8. With regard to the burden of proof, it is well established that the implementing Member bears the overall burden to prove that the time period requested for implementation constitutes a "reasonable period of time".[35]

3.2 Measure to be brought into conformity

3.9. The dispute underlying this arbitration concerns Panama's challenge to the imposition by Colombia of a "compound tariff" on the importation of certain textiles, apparel, and footwear classified in Chapters 61 through 64 of Colombia's Customs Tariff.[36] The compound tariff is composed of an ***ad valorem*** levy, expressed as a percentage of the customs value of goods, and a specific levy, expressed in units of currency per unit of measurement.[37] The ***ad valorem*** component of the compound tariff is 10% for all products regardless of their value. The specific

[28] See Awards of the Arbitrators, ***Peru – Agricultural Products (Article 21.3(c))***, para. 3.6; ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.4; and ***China – GOES (Article 21.3(c))***, para. 3.2.

[29] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.5; ***US – COOL (Article 21.3(c))***, para. 69; and ***EC – Chicken Cuts (Article 21.3(c))***, para. 49.

[30] See Awards of the Arbitrators, ***US – Shrimp II (Viet Nam) (Article 21.3(c))***, para. 3.5; ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.19; ***US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c))***, para. 26; ***EC – Tariff Preferences (Article 21.3(c))***, para. 53; and ***EC – Bananas III (Article 21.3(c))***, para. 19.

[31] See Awards of the Arbitrators, ***US – Shrimp II (Viet Nam) (Article 21.3(c))***, para. 3.5; ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.5; ***China – GOES (Article 21.3(c))***, para. 3.4; ***US – Stainless Steel (Mexico) (Article 21.3(c))***, para. 42; ***Brazil – Retreaded Tyres (Article 21.3(c))***, para. 48; ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 25; and ***US – Offset Act (Byrd Amendment) (Article 21.3(c))***, para. 64.

[32] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.5; ***China – GOES (Article 21.3(c))***, para. 3.4; ***US – COOL (Article 21.3(c))***, para. 70; ***US – Stainless Steel (Mexico) (Article 21.3(c))***, para. 42; ***Brazil – Retreaded Tyres (Article 21.3(c))***, para. 48; ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 25; and ***US – Offset Act (Byrd Amendment) (Article 21.3(c))***, para. 74.

[33] Article 21.2 of the DSU reads:

> 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.

[34] See Awards of the Arbitrators, ***Peru – Agricultural Products (Article 21.3(c))***, para. 3.7; ***US – COOL (Article 21.3(c))***, para. 71; ***Colombia – Ports of Entry (Article 21.3(c))***, para. 106; and ***EC – Export Subsidies on Sugar (Article 21.3(c))***, para. 99.

[35] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.6; ***China – GOES (Article 21.3(c))***, para. 3.5; ***Canada – Pharmaceutical Patents (Article 21.3(c))***, para. 47; ***US – 1916 Act (Article 21.3(c))***, para. 33; and ***EC – Tariff Preferences (Article 21.3(c))***, para. 27.

[36] Panel Report, para. 2.1. The relevant chapters of Colombia's Customs Tariff are: (i) Chapter 61 – "Articles of apparel and clothing accessories, knitted or crocheted"; (ii) Chapter 62 – "Articles of apparel and clothing accessories, not knitted or crocheted"; (iii) Chapter 63 – "Other made up textile articles; sets; worn clothing and worn textile articles; rags"; and (iv) Chapter 64 – "Footwear, gaiters and the like; parts of such articles". (Ibid., fn 58 to para. 7.24)

[37] Appellate Body Report, para. 1.3; Panel Report, para. 2.4.

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component varies depending on the product and the declared free on board (f.o.b.) price in respect of two thresholds: (i) for products classified in Chapters 61, 62, and 63 (textiles and articles of apparel), and under tariff line 6406.10.00.00 of Chapter 64 of the Customs Tariff (uppers of footwear and parts thereof, other than stiffeners), the specific levy is US$5/kg when the declared f.o.b. price is US$10/kg or less, and US$3/kg when the declared f.o.b. price is greater than US$10/kg; and (ii) for products classified in Chapter 64 (footwear), with the exception of those under heading 64.06 (parts of footwear), the specific levy is US$5/pair when the declared f.o.b. price is US$7/pair or less, and US$1.75/pair when the declared f.o.b. price is greater than US$7/pair.[38] When, in a single transaction, some goods under the same subheading are imported at prices at or below and others at prices above the respective threshold, the compound tariff payable is 10% ***ad valorem*** plus the highest specific levy applicable, i.e. US$5/kg or US$5/pair, depending on the classification of the goods.[39] Finally, with respect to certain imports of goods, the compound tariff does not apply.[40]

3.10. Before the Panel, Panama claimed that the compound tariff imposed by Colombia is inconsistent with Article II:1(a) and (b) of the GATT 1994 and Colombia's Schedule of Concessions.[41] Furthermore, in response to the defences invoked by Colombia, Panama requested the Panel to reject the argument that the compound tariff is justified under the general exceptions set out in Article XX(a) and Article XX(d) of the GATT 1994.[42]

3.11. Colombia requested that the Panel reject Panama's claims in their entirety.[43] Colombia contended that the compound tariff is a measure designed to combat illegal trade operations that are not covered by Article II:1 of the GATT 1994 and that Panama had not presented any evidence to establish a ***prima facie*** case that the compound tariff results in a breach of the levels bound in Colombia's Schedule of Concessions.[44] Colombia maintained that, in the event that the Panel were to find that the measure at issue is inconsistent with the relevant obligations under Article II:1, the measure is justified under the general exceptions set out in Article XX(a) and Article XX(d) of the GATT 1994.[45]

3.12. The Panel found that the measure at issue is structured and designed to be applied to all imports of the products concerned, without distinguishing between "licit" and "illicit" trade, and that no provision in Colombia's legal system bans the importation of goods whose declared prices are below the thresholds established in the measure.[46] In light of these findings, the Panel did not consider it necessary to rule on Colombia's claim that the obligations contained in Article II:1(a) and (b) of the GATT 1994 are not applicable to illicit trade.[47]

3.13. The Panel found that the compound tariff constitutes an ordinary customs duty that exceeds the levels bound in Colombia's Schedule of Concessions, and is therefore inconsistent with the first sentence of Article II:1(b) of the GATT 1994, and accords treatment less favourable than that envisaged in Colombia's Schedule of Concessions, in a manner inconsistent with Article II:1(a) of the GATT 1994, in the following instances[48]:

a. for imports of products classified in Chapters 61, 62, and 63, and under tariff line 6406.10.00.00 of Chapter 64 of Colombia's Customs Tariff:

[38] Appellate Body Report, para. 1.3; Panel Report, para. 7.25.
[39] Appellate Body Report, para. 1.3; Panel Report, para. 7.26.
[40] The compound tariff does not apply to: (i) imports of goods from countries with which Colombia has signed free trade agreements, in which subheadings subject to Decree No. 456 have been negotiated; (ii) imports of goods entering certain regions of Colombia designated as Special Customs Regime Zones; or (iii) imports of goods under the Special Import-Export Systems for Capital Goods and Spare Parts, also known as the "Plan Vallejo" (i.e. production inputs, which are subsequently processed or used to manufacture goods for export). (Appellate Body Report, para. 1.3; Panel Report, paras. 7.27-7.30)
[41] Appellate Body Report, para. 1.4; Panel Report, para. 3.1.
[42] Appellate Body Report, para. 1.4; Panel Report, para. 3.2.
[43] Panel Report, para. 3.4.
[44] Panel Report, para. 3.4.
[45] Panel Report, para. 3.4.
[46] Panel Report, para. 8.1.
[47] Panel Report, para. 8.1.
[48] Panel Report, paras. 8.2-8.4.

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i. the tariff consisting of an ***ad valorem*** component of 10% plus a specific component of US$5/kg, when the f.o.b. import price is US$10/kg or less;

ii. the tariff consisting of an ***ad valorem*** component of 10% plus a specific component of US$5/kg, when, in a single transaction, some products under the same subheading are imported at f.o.b. prices above and others at f.o.b. prices below the threshold of US$10/kg; and

iii. with regard to subheading 6305.32, the tariff consisting of an ***ad valorem*** component of 10% plus a specific component of US$3/kg, when the f.o.b. import price is greater than US$10/kg but lower than US$12/kg; and

b. for imports of products classified under various tariff headings of Chapter 64 of Colombia's Customs Tariff subject to the measure at issue:

i. the tariff consisting of an ***ad valorem*** component of 10% plus a specific component of US$5/pair, when the f.o.b. import price is US$7/pair or less; and

ii. the tariff consisting of an ***ad valorem*** component of 10% plus a specific component of US$5/pair, when, in a single transaction, some products under the same subheading are imported at f.o.b. prices above and others at f.o.b. prices below the threshold of US$7/pair.

3.14. Thus, according to the Panel, the ***ad valorem*** equivalent of the compound tariff necessarily exceeds the levels bound in Colombia's Schedule of Concessions in the following circumstances:

Products covered	**Declared f.o.b. price**	**Formula for calculating the compound tariff**
Chapters 61, 62, and 63, and Chapter 64, tariff line 6406.10.00.00	Prices of US$10/kg or less	10% ***ad valorem*** plus US$5/kg
Chapter 63, subheading 6305.32	Prices above US$10 and below US$12/kg	10% ***ad valorem*** plus US$3/kg
Chapters 61, 62, and 63, and Chapter 64, tariff line 6406.10.00.00	Some prices above and others below US$10/kg when imported under the same subheading	10% ***ad valorem*** plus US$5/kg
Chapter 64, except for heading 64.06	Prices of US$7/pair or less	10% ***ad valorem*** plus US$5/pair
Chapter 64, except for heading 64.06	Some prices above and others below US$7/pair when imported under the same subheading	10% ***ad valorem*** plus US$5/pair

Source: Panel Report, para. 7.187.

3.15. With respect to Colombia's recourse to Article XX of the GATT 1994, the Panel found that Colombia had failed to demonstrate that the compound tariff is a measure "designed" to protect public morals within the meaning of Article XX(a), or "designed" to secure compliance with Article 323 of Colombia's Criminal Code within the meaning of Article XX(d).[49] Despite having made these findings, the Panel indicated that, "in order to be exhaustive in its analysis", it would continue with its evaluation by assuming, for the sake of argument, that the compound tariff is "designed" to protect public morals, and "designed" to secure compliance with Article 323 of Colombia's Criminal Code.[50] In the context of its analysis of "necessity", the Panel concluded that Colombia had failed to demonstrate that the compound tariff is a measure "necessary" to protect public morals within the meaning of Article XX(a) of the GATT 1994, or "necessary" to secure compliance with Article 323 of Colombia's Criminal Code within the meaning of Article XX(d).[51]

[49] Panel Report, paras. 7.401 and 7.519.
[50] Panel Report, paras. 7.402 and 7.520.
[51] Panel Report, paras. 7.471, 7.536, and 8.5-8.6.

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3.16. Colombia appealed the Panel's findings of inconsistency under Article II:1(a) and (b) and the Panel's rejection of its defence under Article XX(a) and Article XX(d) of the GATT 1994. Colombia principally argued that Article II:1 does not apply to what it considers to be illicit trade – i.e. imports of products at artificially low prices for money laundering purposes. Additionally, Colombia argued that it should be allowed to maintain the compound tariff because it is a measure "necessary to protect public morals" within the meaning of Article XX(a), and a measure "necessary to secure compliance" with laws and regulations that are not otherwise GATT-inconsistent within the meaning of Article XX(d).[52]

3.17. With respect to the Panel's findings under Article II:1(a) and (b) of the GATT 1994, the Appellate Body reversed the Panel's finding that it was unnecessary for the Panel to issue a finding on whether Article II:1 applies to illicit trade.[53] In completing the legal analysis, the Appellate Body considered that the text of Article II:1(a) and (b) does not exclude what Colombia classifies as "illicit trade".[54] The Appellate Body ultimately found that, in the instances identified in paragraphs 7.164 and 7.180 of the Panel Report, the compound tariff exceeds the bound tariff rates in Colombia's Schedule of Concessions, and is therefore inconsistent with Article II:1(a) and (b) of the GATT 1994.[55]

3.18. With respect to the Panel's findings under Article XX(a) of the GATT 1994, the Appellate Body reversed the Panel's finding that Colombia had failed to demonstrate that the compound tariff is a measure "designed" and "necessary" to protect public morals.[56] In completing the legal analysis, the Appellate Body found instead that, based on the Panel's findings, the measure is indeed "designed" to protect public morals in Colombia within the meaning of Article XX(a).[57] Ultimately, however, the Appellate Body indicated that there was a lack of sufficient clarity with respect to several key aspects of the "necessity" analysis concerning the defence that Colombia presented to the Panel under Article XX(a), such as the degree of contribution of the measure at issue to the objective of combating money laundering and the degree of trade-restrictiveness of the measure. The Appellate Body considered that, without sufficient clarity in respect of these factors, a proper weighing and balancing that could yield a conclusion that the measure is "necessary" could not be conducted. In light of these considerations, the Appellate Body concluded that Colombia had not demonstrated that the measure at issue is "necessary" to protect public morals within the meaning of Article XX(a).[58]

3.19. With respect to the Panel's findings under Article XX(d) of the GATT 1994, the Appellate Body found that the Panel erred in concluding that Colombia had failed to demonstrate that the measure is "designed" and "necessary" to secure compliance with laws or regulations that are not GATT-inconsistent.[59] In completing the legal analysis, the Appellate Body found instead that the measure at issue is "designed" to secure compliance with Article 323 of Colombia's Criminal Code.[60] Ultimately, however, on the basis of reasons similar to those indicated in the context of Article XX(a), the Appellate Body found that Colombia had not demonstrated that the compound tariff is a measure "necessary" to secure compliance with Article 323 of Colombia's Criminal Code, within the meaning of Article XX(d).[61]

3.20. With respect to the Panel's findings under the chapeau of Article XX of the GATT 1994, in light of its earlier findings that Colombia had not demonstrated that the compound tariff is provisionally justified under Article XX(a) or Article XX(d) of the GATT 1994, the Appellate Body did not consider it necessary to examine Colombia's claims on appeal pertaining to the chapeau of Article XX. The Appellate Body thus expressed no view on the Panel's reasoning and findings in that regard.[62]

[52] Appellate Body Report, paras. 5.1, 5.48, and 5.118.
[53] Appellate Body Report, para. 5.28.
[54] Appellate Body Report, para. 5.45.
[55] Appellate Body Report, para. 5.46.
[56] Appellate Body Report, para. 5.93.
[57] Appellate Body Report, para. 5.100.
[58] Appellate Body Report, para. 5.116.
[59] Appellate Body Report, para. 5.136.
[60] Appellate Body Report, para. 5.141.
[61] Appellate Body Report, para. 5.150.
[62] Appellate Body Report, para. 5.153.

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3.21. The Panel and the Appellate Body recommended that the DSB request Colombia to bring its measure into conformity with its obligations under the GATT 1994.[63]

3.3 Factors affecting the determination of the reasonable period of time

3.22. Colombia submits that the reasonable period of time for implementing the DSB's recommendations and rulings in the present dispute should be 12 months. Colombia contends that this time frame, which is within the 15-month guideline foreseen in Article 21.3(c) of the DSU, is a reasonable period of time in light of the particular circumstances of this case, taking into account: the procedural steps set out in Colombia's domestic regulatory framework; the fact that the compound tariff is a measure seeking to combat money laundering falling within the scope of subparagraphs (a) and (d) of Article XX of the GATT 1994; the complexity of designing the implementation measure in light of the Panel and Appellate Body Reports; and Colombia's status as a developing country.

3.23. In response, Panama considers that the request of a 12-month period by Colombia is unfounded. Panama contends that Colombia has failed to show that the proposed time period is the shortest period within its legal system for implementing the recommendations and rulings of the DSB. In Panama's view, since the Panel and the Appellate Body concluded that the compound tariff is inconsistent with Article II:1(a) and (b) of the GATT 1994, Colombia's implementation obligation is limited to ensuring that its tariffs on the products at issue do not exceed the bound levels set out in its Schedule of Concessions. Panama thus considers that any action that is unrelated to or goes beyond the removal of the inconsistency with Article II:1(a) and (b) cannot be included in the reasonable period of time for implementation under Article 21.3(c) of the DSU because it is "extraneous" to the DSB's recommendations and rulings.[64] In Panama's opinion, the reasonable period of time for implementing the DSB's recommendations and rulings in this dispute should be 66 days. However, according to Panama, the establishment of a time period that would have already expired by the time the Arbitrator issued his award would result in the impairment of Panama's right to suspend concessions pursuant to Article 22 of the DSU, since authorization to do so has to be granted within 30 days of the expiry of the reasonable period of time. Therefore, in order to prevent such impairment of its rights, Panama submits that the reasonable period of time under Article 21.3(c) should expire 13 days after the arbitration award in these proceedings has been circulated to the WTO Membership. Panama elaborates that, in prior instances, the minimum time within which the Colombian authorities have carried out a tariff modification is 13 days.[65]

3.24. The following section begins with an overview of the means and steps of implementation chosen by Colombia. Thereafter, I turn to analyse the parties' specific arguments concerning the factors relevant for the determination of the reasonable period of time to implement the DSB's recommendations and rulings in this dispute.

3.3.1 Overview of the chosen means of implementation

3.25. As indicated above, Colombia submits that the reasonable period of time for implementing the DSB's recommendations and rulings in the present dispute should be 12 months. The relevant implementation process, as outlined by Colombia, consists of two consecutive stages of implementation. Each of these stages is expected to take 6 months. Colombia refers to the first stage as the "initial preparatory process"[66], which, according to Colombia, began immediately after the circulation of the Appellate Body Report in the underlying dispute. As a starting point in this process, Colombia's Minister of Trade tasked a team of officials with: (i) identifying and evaluating the different aspects of the measure that were declared to be WTO-inconsistent by the Appellate Body and the Panel; (ii) drawing an inventory of domestic provisions affected by the DSB's findings; (iii) identifying implementation options; and (iv) defining a strategy and timetable for implementation.[67] Colombia explains that this group of officials has met ten times

[63] Panel Report, para. 8.10; Appellate Body Report, para. 6.12.
[64] Panama's submission (English translation), para. 125.
[65] Panama's submission (English translation), para. 178.
[66] Colombia's submission, heading III.B.1(a).
[67] Colombia's submission, para. 17. The group of officials selected by Colombia's Minister of Trade to evaluate Colombia's implementation options started holding meetings on 24 June 2016, that is, two days after the adoption of the Panel and Appellate Body Reports. (Minutes and lists of attendees of the meetings of the

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since the adoption of the Panel and Appellate Body Reports by the DSB on 22 June 2016, and presented a report on its activities to Colombia's Inter-institutional Commission against Smuggling. This Commission held a meeting on 24 August 2016 where it considered the report and decided that two inter-agency working groups should be established to undertake two assessments.[68]

3.26. Colombia argues that the first assessment by the working groups concerns the design of the implementing tariff measure and, in particular, the identification of two categories of thresholds that would be part of the revised tariff measure.[69] Colombia maintains that modifying the compound tariff's thresholds requires conducting a rigorous economic analysis to ensure the proper calibration of the measure. In Colombia's view, conducting this analysis will take 10 weeks.[70] The second assessment by the working groups concerns improvements to Colombia's customs control and supervision procedures in the form of an implementing customs measure.[71] Colombia contends that "[t]hese improvements are needed to address, in particular, the risks of money laundering associated with imports of apparel and footwear below the first threshold."[72] Colombia indicates that, whereas the design of the tariff measure has been entrusted to a working group led by its Ministry of Trade, Industry and Tourism, the customs measure falls within the responsibility of Colombia's ***Dirección de Impuestos y Aduanas Nacionales*** (DIAN) (National Customs and Excise Directorate).[73] Colombia asserts that "four months (counted as of 24 August [2016] when the Commission held its special session) will be required for the working groups to complete their analysis".[74] The analysis and findings of the working groups will then be subject to approval by the officials that will have to implement the measures. For the foregoing reasons, Colombia concludes that the first stage should take 6 months as of the adoption of the DSB's recommendations and rulings.[75]

3.27. Colombia indicates that, during the second stage of implementation, it will "carry out the administrative processes required to enact the measures modifying the compound tariff and implementing the improvements to Colombia's customs control and supervision procedures".[76] Colombia explains that "[t]wo mutually-supportive decrees would have to be issued. One regarding the adjustment of tariffs and the other establishing the customs measures."[77] Therefore, the second stage, as outlined by Colombia, consists of the following seven steps: (i) the issuance of a recommendation by the Committee on Customs, Tariffs and International Trade Affairs (Triple A Committee), which will require 2 weeks; (ii) the preparation of the draft tariff decree, which will take 1 month and, concurrently, the preparation of the draft customs decree and its accompanying resolutions, which will require 2 months[78]; (iii) public consultations with an estimated time of 2 weeks; (iv) the issuance of an opinion by the Superintendent of Industry and Commerce on the potential impact of the proposed decrees on the conditions of competition, which will require 2 weeks; (v) the review and signature of the decrees by the Minister of Trade and the Minister of Finance, with an estimated time of 1 month; (vi) the review of the decrees by the Secretariat of the Office of the President of the Republic and the President's signature, which will

group of officials selected by Colombia's Minister of Trade, Industry and Tourism held in June, July, and August 2016 (Exhibit COL-ARB-1))

[68] Colombia's submission, paras. 18-21. See also Minutes and lists of attendees of the meetings of the group of officials selected by Colombia's Minister of Trade, Industry and Tourism held in June, July, and August 2016 (Exhibit COL-ARB-1); Minutes of the meeting of the Inter-institutional Commission against Smuggling held on 24 August 2016 (Exhibit COL-ARB-2); and Ministry of Trade, Industry and Tourism, Report on International Legal Defence related to the smuggling and customs fraud problem, 1 July 2016 (Exhibit COL-ARB-5).

[69] Colombia's submission, paras. 21 and 24.

[70] Colombia's submission, paras. 54-55.

[71] Colombia's submission, paras. 22 and 24.

[72] Colombia's submission, para. 22.

[73] Colombia submits that some officials have been working in both groups in order to ensure consistency of the tariff and customs measures. (Colombia's submission, para. 22)

[74] Colombia's submission, para. 27.

[75] Colombia's submission, paras. 26-27.

[76] Colombia's submission, para. 28.

[77] Colombia's submission, para. 29.

[78] Colombia contends that the ***Dirección de Impuestos y Aduanas Nacionales*** (DIAN) (National Customs and Excise Directorate) will have to prepare several resolutions in addition to the customs decree. According to Colombia, the preparation and review of these resolutions means that the internal process for the customs decree and accompanying resolutions is likely to take longer than the time period estimated above for the tariff decree. (Colombia's submission, para. 33)

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take 2 weeks; and (vii) the publication and entry into force of the decrees, which will require 1 month. Colombia estimates that the second stage will take 6 months.[79]

3.28. For its part, Panama argues that, under Colombian law, the period of 12 months requested by Colombia is not the shortest period possible to comply with the DSB's recommendations and rulings. Panama points out that, since the DSB's recommendations and rulings refer to the inconsistency of the compound tariff with Article II:1(a) and (b) of the GATT 1994, Colombia's implementation obligation is limited to removing this inconsistency, that is, to ensuring that its tariffs on the products at issue do not exceed the bound levels set out in its Schedule of Concessions. Consequently, Panama argues, any action that is unrelated to or goes beyond the removal of the inconsistency with Article II:1(a) and (b) cannot be taken into account in determining the reasonable period of time for implementation under Article 21.3(c) of the DSU. Panama asserts that none of the implementing measures proposed by Colombia – the changes to the thresholds of the compound tariff and the improvements to its criminal policy on money laundering[80] – are aimed at complying with the recommendations and rulings of the DSB. In Panama's view, the two types of measures proposed by Colombia seek to improve Colombia's criminal policy to combat money laundering, rather than to bring the measure at issue into conformity with Article II:1(a) and (b).[81] Indeed, none of the implementing measures seeks to ensure that the compound tariff does not exceed Colombia's bound tariff rates. According to Panama, previous arbitral awards under Article 21.3(c) confirm that the reasonable period of time should not include the time to adopt measures that are not strictly necessary for or are unrelated to compliance with the DSB's recommendations and rulings.[82] Panama also maintains that Colombia's implementation actions would seem to be aimed at justifying the measure at issue under Article XX(a) and Article XX(d) of the GATT 1994. In this regard, Panama argues that no action proposed by Colombia aimed at ensuring that its measure is justified under Article XX should be taken into account for determining the reasonable period of time for implementation in this dispute, bearing in mind that the Panel and the Appellate Body rejected Colombia's position that the measure was "necessary" under Article XX.[83]

3.29. With respect to the stages of the implementation process, Panama requests me to reject the 6-month period outlined by Colombia for the first stage. In addition to arguing that Colombia's implementation actions in the context of the first stage are not relevant for complying with Article II:1(a) and (b), Panama asserts that Colombia does not provide any legal basis under its domestic law for: (i) the need to carry out these steps; and (ii) the proposed duration of these steps.[84] With respect to the steps and time frames proposed by Colombia for the second stage, Panama maintains that Colombia confines itself to asserting that it needs 6 months without providing any basis in law or practice to justify the period requested. Thus, Panama argues, Colombia has not shown that the time period it requests for the second stage is the shortest period for implementing the recommendations and rulings of the DSB.[85]

3.30. Panama considers that there are several "anomalies" in the steps and time frames proposed by Colombia for the second stage.[86] First, Panama maintains that, in light of the flexibilities under Colombian law, the recommendation from the Triple A Committee could be issued within 7 days.[87] Second, Panama asserts that Colombia has not provided any legal basis to establish the mandatory nature or duration of the time frames regarding step 2 (the preparation of the draft tariff decree) through step 6 (the review of the decrees by the Secretariat of the Office of the President of the Republic and the President's signature). In Panama's view, the practice followed by Colombia in enacting and modifying the compound tariff does not support the proposed time period of 3 months and 2 weeks. For Panama, the issuance of Decree No. 074 and Decree

[79] Colombia's submission, paras. 28-38.
[80] Panama's submission (English translation), para. 48.
[81] Panama's submission (English translation), paras. 44-49.
[82] Panama's submission (English translation), paras. 53-59.
[83] Panama's submission (English translation), paras. 64-68.
[84] Panama's submission (English translation), paras. 87-91.
[85] Panama's submission (English translation), paras. 96-99.
[86] Panama's submission (English translation), para. 100.
[87] Panama's submission (English translation), paras. 102-106.

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No. 456[88] shows that steps 2 through 6 can be carried out in a maximum period of 37 days.[89] Third, Panama argues that the following two steps under the second stage are unnecessary for the implementation of the DSB's recommendations and rulings: (i) the preparation of the draft customs decree and accompanying resolutions, because these instruments are irrelevant for the implementation of the recommendations and rulings of the DSB[90]; and (ii) the opinion of the Superintendent of Industry and Commerce, inasmuch as it is a discretionary step in the process of enacting the proposed tariff decree, which, in any event, could be conducted in parallel with other steps.[91] Fourth, Panama asserts that the proposed public consultations are a discretionary step and, thus, they are not essential for the modification of the compound tariff. Panama adds that, in the event that this step were to be considered a mandatory one, the practice followed by Colombia in modifying the compound tariff reveals that the public consultations step could be carried out in a period of 0 to 3 days.[92] Finally, Panama argues that, instead of the 1-month period requested by Colombia, the decree modifying the compound tariff should enter into force immediately following publication in the ***Diario Oficial*** (Official Gazette). While Panama understands that Colombian Law No. 1609/2013[93] provides that decrees enter into force between 15 and 90 days following their publication, this instrument also establishes that, in "special circumstances", decrees shall enter into force immediately following publication in the Official Gazette.[94] In Panama's view, in the case of tariff modifications, Colombia has considered the implementation of its WTO commitments to constitute "special circumstances" that justify an immediate entry into force of the relevant decrees following their publication.[95]

3.31. In light of the above considerations, Panama maintains that Colombia should be granted a reasonable period of time of 66 days, given that this is the shortest period under Colombian law for bringing the measure at issue into conformity with the DSB's recommendations and rulings. In the context of the first stage, Panama considers that the period proposed by Colombia to assess the Reports of the Panel and the Appellate Body and to design the implementation options should not exceed 18 days.[96] Moreover, Panama considers that, depending on the implementation option selected by Colombia, the period for designing the implementing measure should be 0 days or 1 day.[97] Thus, in total, the first stage should take 18 or 19 days. In addition, Panama contends that, given that the time period requested by Colombia for the implementation of the second stage was exaggerated and that some implementation steps are unnecessary, the implementation of this stage should take 47 days.[98] Therefore, Panama submits that the shortest period possible for implementation of the recommendations and rulings of the DSB is 65 or 66 days, depending on the implementation option chosen by Colombia. According to Panama, the reasonable period of time for Colombia expired on 26 or 27 August 2016.[99]

[88] Panama indicates that the compound tariff was issued and modified by means of Decree No. 074 and Decree No. 456, which makes them the best references for determining the reasonable period in this dispute. (Panama's submission (English translation), paras. 108-109)

[89] Panama's submission (English translation), paras. 112-120.

[90] Panama's submission (English translation), paras. 123-128.

[91] Panama's submission (English translation), paras. 129-132. Panama doubts whether the intervention of the Superintendent of Industry and Commerce is relevant for the modification of a tariff, and asserts that, in any event, this step could be carried out simultaneously with other steps envisaged by Colombia. (Ibid., paras. 133-134)

[92] Panama's submission (English translation), paras. 137-141. Panama also considers that this step could be carried out simultaneously with the review and signature of the decrees by the Minister of Trade and the Minister of Finance. (Ibid., para. 142)

[93] Law No. 1609 of 2013, establishing general standards for governmental modification of tariffs, rates and other provisions concerning the customs regime (Law No. 1609/2013) (Exhibit COL-ARB-4).

[94] Panama's submission (English translation), para. 144.

[95] Panama's submission (English translation), paras. 145-146.

[96] Panama's submission (English translation), para. 158.

[97] Panama considers that one of the implementation options available to Colombia would be to return to the ***ad valorem*** tariff existing prior to the enactment of Decree No. 456. Under this implementation option, Panama considers that the time that should be included in the calculation of the reasonable period of time should be 0 days. Alternatively, Panama argues that, if Colombia were to opt for the establishment of a capping mechanism, the time that should be included in the calculation of the reasonable period of time should be 1 day.

[98] Panama's submission (English translation), paras. 169-171.

[99] Panama's submission (English translation), para. 172.

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3.32. However, as indicated above[100], Panama further argues that the establishment of a time period that would have already expired by the time the Award in the present proceedings is issued would result in the impairment of Panama's right to suspend concessions pursuant to Article 22 of the DSU, since authorization to do so must be granted within 30 days of the expiry of the reasonable period of time. Therefore, in order to prevent such impairment of its rights, Panama submits that the reasonable period of time should expire 13 days after the Award in this arbitration has been circulated to the WTO Membership.[101]

3.3.2 Analysis

3.33. As Arbitrator under Article 21.3(c) of the DSU, my mandate is to determine the time period within which Colombia must comply with the recommendations and rulings of the DSB in this dispute. It is well established that the implementing Member has a measure of discretion in choosing the means of implementation it deems most appropriate. At the same time, the chosen means of implementation must be capable of bringing the Member into compliance with its WTO obligations. The findings by the Panel and the Appellate Body in the underlying dispute offer relevant guidance for determining whether the proposed implementing measures are apt to achieve compliance, and, accordingly, for the determination of the time frame that is required for implementation. At the same time, following previous arbitrators, I note that objectives or measures that are "extraneous" to the findings by the Panel and the Appellate Body adopted by the DSB cannot justify prolonging the reasonable period of time.[102] In any event, I am mindful that the assessment of the WTO-consistency of the compliance measures eventually implemented is the domain of compliance proceedings under Article 21.5 of the DSU. Moreover, the implementing Member is expected to use the flexibilities within its legal system to achieve compliance within the shortest period of time possible for implementation. However, the implementing Member is not expected to utilize "extraordinary procedures" to bring its measures into compliance.[103] In determining the reasonable period of time, the particular circumstances of the dispute should be taken into account, including the complexity of the implementation process and the nature of the steps to be taken for implementation. With these considerations in mind, I turn now to review the relevant factors for determining the reasonable period of time in this dispute in light of the parties' arguments.

3.34. The determination of the reasonable period of time in the present dispute is closely related to the nature of Colombia's compliance obligations. Indeed, the parties disagree on the scope of the compliance obligations that the DSB's recommendations and rulings impose on Colombia. Colombia argues that the particular circumstances relevant for determining the reasonable period of time in this case include the fact, recognized by the Appellate Body, that the compound tariff is a measure designed to combat money laundering within the scope of paragraph (a) and paragraph (d) of Article XX of the GATT 1994. Colombia contends that it is entitled to comply with the DSB's recommendations and rulings by devising a measure that complies with Article II:1(a) and (b) of the GATT 1994 and, at the same time, addresses the legitimate policy objective that the original measure sought to address – i.e. combating money laundering. Colombia maintains that, in light of the objective pursued by the compound tariff, it cannot simply terminate the measure or allow it to lapse.[104] Instead, Colombia foresees issuing two "mutually-supportive decrees"[105] as part of the implementation process. The first measure would adjust the compound tariff with a view to making it compliant with Colombia's tariff bindings under Article II of the GATT 1994, while seeking to address the continuing risks of money laundering posed by imports at artificially low prices. Colombia asserts that the second measure it proposes would seek to improve

[100] See *supra*, para. 3.23.

[101] Panama's submission (English translation), paras. 177-178.

[102] See Awards of the Arbitrators, ***EC – Export Subsidies on Sugar (Article 21.3(c))***, para. 69; and ***EC – Tariff Preferences (Article 21.3(c))***, paras. 29-33.

[103] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.5; ***China – GOES (Article 21.3(c))***, para. 3.4; ***US – COOL (Article 21.3(c))***, para. 70; ***US – Stainless Steel (Mexico) (Article 21.3(c))***, para. 42; ***Brazil – Retreaded Tyres (Article 21.3(c))***, para. 48; ***Japan – DRAMs (Korea) (Article 21.3(c))***, para. 25; and ***US – Offset Act (Byrd Amendment) (Article 21.3(c))***, para. 74.

[104] Colombia's submission, para. 4.

[105] Colombia's submission, para. 29.

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Colombia's customs control and supervision procedures so as to address the risks of money laundering associated with imports of apparel and footwear.[106]

3.35. For its part, Panama contends that, since the DSB's recommendations and rulings refer to the inconsistency of the compound tariff with Article II:1(a) and (b) of the GATT 1994, Colombia's implementation obligation is limited to removing this inconsistency, that is, to ensuring that its tariffs on the products at issue do not exceed the bound levels set out in its Schedule of Concessions. Consequently, Panama argues that any action that is unrelated to or goes beyond the removal of the inconsistency with Article II:1(a) and (b) cannot be included in the reasonable period of time for implementation under Article 21.3(c) because it would be "extraneous" to the DSB's recommendations and rulings. In particular, Panama considers that the customs measure proposed by Colombia is not aimed at complying with the recommendations and rulings of the DSB. Rather, this measure seeks to improve Colombia's criminal policy to combat money laundering, instead of bringing the measure at issue into conformity with Article II:1(a) and (b).[107]

3.36. I note that the parties to this dispute disagree not only on the time required by Colombia for the implementation of the DSB's recommendations and rulings, but also on the type of measures that Colombia may be able to adopt in order to comply with the DSB's recommendations and rulings. As stated by previous arbitrators under Article 21.3(c), the means of implementation chosen by the implementing Member must be apt in form, nature, and content to bring the Member into compliance with its WTO obligations within a reasonable period of time, in accordance with the guideline contained in Article 21.3(c).[108] At the same time, as I have noted above, objectives or measures that are "extraneous" to the findings by the Panel and the Appellate Body adopted by the DSB cannot justify prolonging the reasonable period of time.[109] Therefore, I am required to examine the findings of the Panel and the Appellate Body adopted by the DSB to ascertain whether the decrees proposed by Colombia – i.e. the tariff decree and the customs decree – fall within the range of measures that would be capable of achieving prompt compliance with the DSB's recommendations and rulings in light of those findings. If this is the case, the time necessary for Colombia to implement these measures could not be considered as exceeding the reasonable period of time.

3.37. The Panel found that the compound tariff constitutes an ordinary customs duty that, in certain instances[110], exceeds the levels bound in Colombia's Schedule of Concessions, and is therefore inconsistent with the first sentence of Article II:1(b) of the GATT 1994, and accords treatment less favourable than that envisaged in Colombia's Schedule of Concessions, in a manner inconsistent with Article II:1(a) of the GATT 1994. In relation to Colombia's recourse to justification under Article XX of the GATT 1994, the Panel found that Colombia had failed to demonstrate that the compound tariff is a measure "designed" to protect public morals within the meaning of Article XX(a), or "designed" to secure compliance with Article 323 of Colombia's Criminal Code within the meaning of Article XX(d).[111]

3.38. Colombia appealed the Panel's findings of inconsistency under Article II:1(a) and (b) and the Panel's rejection of its defence under Article XX(a) and Article XX(d) of the GATT 1994. With respect to Article II:1(a) and (b) of the GATT 1994, the Appellate Body ultimately found that, for imports of products classified in Chapters 61, 62, 63, and 64 (except for heading 64.06 but including tariff line 6406.10.00.00) of Colombia's Customs Tariff, the compound tariff exceeds the bound tariff rates in Colombia's Schedule of Concessions in the instances identified in paragraphs 7.164 and 7.180 of the Panel Report, and is therefore inconsistent with Article II:1(a) and (b) of the GATT 1994.[112] With respect to the Panel's findings under Article XX(a) of the

[106] Colombia's submission, paras. 8 and 22.

[107] At the oral hearing, Panama clarified that it would not object to the inclusion of some time for enacting the proposed tariff measure within the reasonable period of time, provided that such measure would be accompanied by some form of capping mechanism to ensure that Colombia's bound tariff rates are not exceeded.

[108] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.3; ***China – GOES (Article 21.3(c))***, para. 3.2; and ***Colombia – Ports of Entry (Article 21.3(c))***, para. 64.

[109] See Awards of the Arbitrators, ***EC – Export Subsidies on Sugar (Article 21.3(c))***, para. 69; and ***EC – Tariff Preferences (Article 21.3(c))***, paras. 29-33.

[110] See ***supra***, para. 3.13.

[111] Panel Report, paras. 7.410 and 7.519.

[112] Appellate Body Report, para. 6.3.

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GATT 1994, the Appellate Body reversed the Panel's finding that Colombia had failed to demonstrate that the compound tariff is a measure "designed" and "necessary" to protect public morals.[113] In completing the legal analysis, the Appellate Body found that the measure is indeed "designed" to protect public morals in Colombia within the meaning of Article XX(a). However, in the context of the "necessity" analysis, the Appellate Body ultimately found that Colombia had not demonstrated that the compound tariff is a measure "necessary" to protect public morals within the meaning of Article XX(a).[114] The Appellate Body made similar findings in the context of Article XX(d) of the GATT 1994.[115] The Panel and the Appellate Body recommended that the DSB request Colombia to bring its measure into conformity with its obligations under the GATT 1994.[116]

3.39. The above findings are, in my view, instructive for my consideration of the scope of Colombia's implementation obligations. This, in turn, will be relevant for my determination of the reasonable period of time that Colombia may be granted for implementation. I note that both the Panel and the Appellate Body concluded that, in certain instances, the compound tariff is inconsistent with Colombia's obligations under Article II:1(a) and (b) of the GATT 1994. Turning to the findings under Article XX, I recall that the Appellate Body reversed the Panel's finding that the compound tariff is not "designed" to combat money laundering.[117] In completing the legal analysis, the Appellate Body went on to find that the compound tariff is not incapable of combating money laundering, thereby recognizing that there is a relationship between that measure and the protection of public morals. On this basis, the Appellate Body found that the compound tariff is "designed" to protect public morals in Colombia within the meaning of Article XX(a).[118] A similar set of findings was made under Article XX(d).[119]

3.40. While the Appellate Body ultimately found fault with Colombia's compound tariff, it recognized that there is a relationship between the compound tariff and the objective of combating money laundering in Colombia. I recall that the implementing Member has a measure of discretion in choosing the means of implementation that it deems most appropriate[120], as long as they are apt in form, nature, and content to bring the Member into compliance with its WTO obligations.[121] In light of this guidance and the recognition that the compound tariff seeks to combat money laundering, I consider that Colombia has a range of implementation options, which include the adoption of a measure that continues to pursue the policy objective of combating money laundering in a WTO-consistent manner. Therefore, in determining the reasonable period of time, it is relevant, in my view, that the DSB's recommendations and rulings imply that Colombia may decide to adopt measures pursuing the policy objective of combating money laundering, as long as they are apt in form, nature, and content to bring Colombia into compliance with its obligations under the GATT 1994.

3.41. Consequently, I disagree with Panama's argument that the proposed customs measure and those aspects of the tariff measure that relate to the policy objective of combating money

[113] Appellate Body Report, para. 5.93.
[114] Appellate Body Report, paras. 5.100, 5.117, and 6.4-6.7.
[115] See ***supra***, para. 3.19. The Appellate Body did not consider it necessary to examine Colombia's claims on appeal pertaining to the chapeau of Article XX.
[116] Appellate Body Report, para. 6.12; Panel Report, para. 8.10.
[117] Appellate Body Report, para. 5.93.
[118] The Appellate Body found, in particular, that, when several findings by the Panel are read together, it is clear from its analysis that the compound tariff is not incapable of combating money laundering, such that there is a relationship between that measure and the protection of public morals. The Appellate Body understood the Panel to have recognized that at least some goods priced at or below the thresholds could be imported into Colombia at artificially low prices for money laundering purposes, and would thus be subject to the disincentive created by the higher specific duties that apply to such goods. (Appellate Body Report, para. 5.99)
[119] Similarly, in the context of Article XX(d), the Appellate Body indicated that, when several findings by the Panel are read together, it is clear from its analysis that the compound tariff is not incapable of securing compliance with Article 323 of Colombia's Criminal Code, such that there is a relationship between that measure and securing such compliance. (Appellate Body Report, para. 5.140)
[120] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.3; ***China – GOES (Article 21.3(c))***, para. 3.4; and ***Brazil – Retreaded Tyres (Article 21.3(c))***, para. 48.
[121] See Awards of the Arbitrators, ***US – Countervailing Measures (China) (Article 21.3(c))***, para. 3.3; ***China – GOES (Article 21.3(c))***, para. 3.2; and ***Colombia – Ports of Entry (Article 21.3(c))***, para. 64.

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laundering are "extraneous" to the recommendations and rulings of the DSB.[122] On the contrary, I consider that the time needed to enact these decrees should be included in the calculation of the reasonable period of time for implementation under Article 21.3(c) of the DSU.

3.42. Having concluded that the calculation of the reasonable period of time in the present dispute should include the time needed to enact both the tariff measure and the customs measure, I turn next to examine the various steps of the legal process to modify the compound tariff outlined by Colombia.

3.43. Before analysing in detail the implementation steps described by Colombia, I consider it important to recall 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.[123] Accordingly, in making my determination as to the reasonable period of time for implementation, I will take into account the actions taken by Colombia in the period of time between the date of adoption of the Panel and Appellate Body Reports by the DSB and the initiation of these arbitration proceedings.

3.44. Colombia's proposed implementation process is divided in two stages. The first stage is referred to by Colombia as the "initial preparatory process".[124] Colombia began this process immediately after the adoption of the Panel and Appellate Body Reports by requesting a group of officials to analyse the Panel and Appellate Body Reports and to evaluate how to implement the recommendations and rulings of the DSB.[125] This group of officials, composed of representatives of, ***inter alia***, the Ministry of Trade, Industry and Tourism, and the DIAN, held several meetings to identify implementation options and define a timetable for implementation. These officials also presented a report on the group's activities[126] to Colombia's Inter-institutional Commission against Smuggling[127], which held a special session on 24 August 2016 to discuss possible strategies to address problems of smuggling, money laundering, and customs fraud in apparel and footwear, in relation to the implementation of the DSB's recommendations and rulings. At this session, the Commission decided that inter-agency working groups should be created to establish an implementation plan and timetable.[128] Colombia indicates that one of the working groups is tasked with identifying the categories of thresholds that would be part of the revised tariff. In particular, Colombia maintains that it needs to identify: (i) a first threshold of prices that are artificially low and thus that do not reflect market conditions because these prices cannot reflect costs of production; and (ii) a second threshold of prices that are low, but above the first threshold, reflecting a range of prices that will be subject to close supervision, albeit not as tight as that envisaged for prices below production costs.[129] According to Colombia, identifying these thresholds requires conducting an economic analysis, which will take 10 weeks.[130] The second working group is tasked with designing a customs measure to improve Colombia's customs control and supervision procedures. Colombia indicates that this working group will need to analyse how to improve various aspects of Colombia's customs control and supervision procedures, including

[122] Panama's submission (English translation), para. 125.

[123] Award of the Arbitrator, ***Chile – Price Band System (Article 21.3(c))***, para. 43. See also Awards of the Arbitrators, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 79; and ***US – Section 110(5) Copyright Act (Article 21.3(c))***, para. 46.

[124] Colombia's submission, heading III.B.1(a).

[125] The group of officials selected by Colombia's Minister of Trade to evaluate Colombia's implementation options started holding meetings on 24 June 2016, that is, two days after the adoption of the Panel and Appellate Body Reports. (Minutes of the meetings of the group of officials selected by Colombia's Minister of Trade, Industry and Tourism held in June, July, and August 2016 (Exhibit COL-ARB-1)).

[126] See Ministry of Trade, Industry and Tourism, Report on International Legal Defence related to the smuggling and customs fraud problem, 1 July 2016 (Exhibit COL-ARB-5).

[127] The Inter-institutional Commission against Smuggling is an inter-agency body composed of representatives from the Ministry of Trade, Industry and Tourism, the Ministry of Finance, the General Prosecutor's Office, the National Police, the DIAN, the Ministry of Foreign Affairs, the Ministry of Agriculture, the Superintendence of Industry and Commerce, the Superintendence of Transportation and Ports, and the Financial Information and Analysis Unit. (Colombia's submission, para. 19)

[128] Colombia's submission, para. 20. See also Minutes of the meeting of the Inter-institutional Commission against Smuggling held on 24 August 2016 (Exhibit COL-ARB-2), p. 7.

[129] Colombia's submission, para. 21.

[130] Colombia's submission, paras. 21 and 54-55.

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strengthening customs controls based on risk assessment criteria, and close supervision of the price and origin of the imported goods.[131]

3.45. In my view, the initial preparatory process described by Colombia appears to be in line with the need to take concrete steps towards implementation from the date of adoption of the panel or Appellate Body reports by the DSB. Indeed, Colombia promptly established an institutional framework tasked with proposing and coordinating an administrative plan of action for implementation. In this regard, a previous arbitrator observed that "consultations within governmental agencies … are typically a concomitant of lawmaking in contemporary polities"[132], and therefore should be taken into account in determining the reasonable period of time for implementation. This guidance is relevant and instructive. Thus, I consider the work conducted by the various groups of officials in the Colombian Government during the first stage relevant to my determination. In this regard, I observe that Panama does not dispute that, for the purposes of the preparatory stage, Colombia needs to analyse the Panel and Appellate Body Reports in order to identify its implementation options and establish a roadmap.[133]

3.46. Colombia contends that the first stage should take 6 months in total as of the adoption of the DSB's recommendations and rulings.[134] This time period includes the 4 months that, according to Colombia, will be required for the working groups to complete their analytical work.[135] I agree that the determination of the reasonable period of time should include time to conduct the preparatory process described by Colombia, which includes time for the relevant government authorities to review and analyse the DSB's recommendations and rulings, as well as time to evaluate how to implement these recommendations and rulings. I also recognize that some of the tasks envisaged by Colombia, such as the economic analysis to design the new thresholds of the revised tariff, may entail a significant degree of complexity. For instance, Colombia explained at the hearing that the process of identifying the new thresholds involves examining extensive economic information from domestic and foreign sources to determine the correct prices for each threshold.[136] However, the arguments and evidence submitted by the parties have convinced me that some of the preparatory steps envisaged by Colombia could be pursued in parallel and within shorter time frames. Therefore, I am not convinced that Colombia requires 6 months to conduct this work. Rather, I consider that the first stage described by Colombia can be completed in less than 4 months.

3.47. Turning to the second stage, Colombia indicates that, during this second stage, it "will carry out the administrative processes required to enact the measures modifying the compound tariff and implementing the improvements to Colombia's customs control and supervision procedures".[137] I recall that Colombia envisages the following seven steps for the second stage: (i) the issuance of a recommendation by the Triple A Committee; (ii) the preparation of the draft tariff decree and of the draft customs decree and its accompanying resolutions; (iii) public consultations; (iv) the issuance of an opinion by the Superintendent of Industry and Commerce on the potential impact of the proposed decrees on the conditions of competition; (v) the review and signature of the decrees by the Minister of Trade and the Minister of Finance; (vi) the review of the decrees by the Secretariat of the Office of the President of the Republic and the President's signature; and (vii) the publication and entry into force of the decrees. Colombia estimates that the second stage of implementation will take 6 months.[138]

3.48. The parties' arguments and evidence show that some of the component steps of the second stage are administratively mandated. Indeed, Colombia has established that, before the tariff measure and the customs measure can be enacted, certain legal prerequisites must be

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[131] Colombia's submission, paras. 22-24.

[132] Award of the Arbitrator, ***Chile – Price Band System (Article 21.3(c))***, para. 42. See also Award of the Arbitrator, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 80.

[133] Panama's submission (English translation), para. 152. I also note that Panama disagrees with Colombia as regards the time allocated for the first stage.

[134] Colombia's submission, para. 27.

[135] Colombia's submission, para. 27.

[136] Colombia explains that this assessment includes determining the costs production of the products at issue and the prices in the international market for those products. (Colombia's response to questioning at the hearing)

[137] Colombia's submission, para. 28.

[138] Colombia's submission, paras. 28-38.

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fulfilled. For instance, pursuant to Decree No. 3303/2006, the preparation of the decrees requires a recommendation from the Triple A Committee.[139] I also note that, following the recommendation by the Triple A Committee, the tariff decree and the customs decree must be prepared by, respectively, the Ministry of Trade, Industry and Tourism, and the DIAN.[140] Moreover, Decree No. 1609/2015 establishes certain legal formalities that have a bearing on some of the steps outlined by Colombia, including public consultations, the issuance of the opinion by the Superintendent of Industry and Commerce, the review and signature of the decrees by the Minister of Trade and the Minister of Finance, and the review of the decrees by the Secretariat of the Office of the President of the Republic.[141] Finally, as established in Law No. 1609/2013, enactment of the decrees at issue requires the signature by the President of Colombia and subsequent publication in the Official Gazette and entry into force.[142]

3.49. I consider it important to offer some additional remarks regarding two of the steps mentioned above – i.e. public consultations; and the opinion of the Superintendent of Industry and Commerce. With regard to public consultations, Colombia argues that, pursuant to Decree No. 1609/2015, draft decrees must be subject to public consultations before being enacted.[143] Panama counters that Decree No. 1609/2015 is only applicable to situations where ***in accordance with the law*** public consultations are required, and that Colombia has ***not*** established that any law mandates public consultations prior to enactment of the proposed tariff and customs decrees.[144] At the hearing, Colombia indicated that Article 8 of Law No. 1437/2011 requires that the proposed decrees are subject to public consultations.[145] In response, Panama stated that, while this provision in Law No. 1437/2011 does refer to public consultations, it provides the implementing authority with the discretion to decide whether or not it wishes to elicit comments from the public.[146] In this context, I note that, in its submission, Panama refers to a number of past instances where the Ministry of Trade, Industry and Tourism held public consultations in enacting decrees related to tariffs, ranging from 0 days – where comments were requested for the same day – to 3 days. According to Panama, the period of time for public consultations concerning the modification of Decree No. 456 was 3 days.[147] As indicated by Panama, it appears that, in several instances, the Colombian authorities have held public consultations prior to issuing a decree related to the imposition of tariffs. The examples identified by Panama show that the periods of time devoted to public consultations have indeed been rather short. At the same time, I consider it important to underscore that these examples also demonstrate that the relevant Colombian authorities have conducted public consultations in the process of enacting decrees. As noted by one arbitrator, "the controlling principle is that the 'reasonable period of time' should be

[139] Colombia's submission, para. 30; Decree of the President of the Republic of Colombia No. 3303 of 2006, establishing provisions in relation to the Committee on Customs, Tariff and International Trade Affairs (Decree No. 3303/2006) (Exhibit COL-ARB-8).

[140] Colombia's submission, paras. 31-32; Decree of the President of the Republic of Colombia No. 1609 of 2015, amending the general guidelines for normative technique covered by heading 2 of Book 2, Part 1 of Decree No. 1081 of 2015 (Decree No. 1609/2005), Articles 2.1.2.1.6 and 2.1.2.1.7 (Exhibit COL-ARB-7); Decree of the President of the Republic of Colombia No. 4048 of 2008, modifying the structure of the Special Administrative Unit – National Customs and Excise Directorate, Article 3.12 (Exhibit COL-ARB-6); Resolution No. 00457 of 2008, establishing criteria for the definition of procedures within the processes of the National Customs and Excise Directorate and for the standardization and normalization of their support documents (Resolution No. 00457/2008) (Exhibit COL-ARB-14).

[141] Decree No. 1609/2005, Articles 2.1.2.1.6, 2.1.2.1.7, 2.1.2.1.9, 2.1.2.1.14, and 2.1.2.1.17 (Exhibit COL-ARB-7).

[142] Colombia's submission, para. 37; Title VII of the Colombian Constitution, Chapter 1, Article 189 (Exhibit COL-ARB-3); Law No. 1609/2013 (Exhibit COL-ARB-4).

[143] Colombia's submission, para. 34.

[144] Panama's submission (English translation), para. 137.

[145] Colombia's response to questioning at the hearing.

[146] Panama's response to questioning at the hearing.

[147] Panama's submission (English translation), paras. 139-141. See also ***Publicidad de proyectos de normatividad 2016 del Ministerio de Comercio, disponible al: <http://www.mincit.gov.co/publicaciones.php?id=37103>, visitado el 16 de septiembre de 2016*** (List of draft regulations during 2016 from the Ministry of Trade, Industry and Tourism, available at: <http://www.mincit.gov.co/publicaciones.php?id=37103>, accessed 16 September 2016) (Exhibit PAN-ARB-4); and ***Publicidad de proyectos de normatividad 2013-2014 del Ministerio de Comercio, disponible al: <http://www.mincit.gov.co/publicaciones.php?id=32381>, visitado el 16 de septiembre de 2016*** (List of draft regulations during 2013 and 2014 from the Ministry of Trade, Industry and Tourism, available at: <http://www.mincit.gov.co/publicaciones.php?id=32381>, accessed 16 September 2016) (Exhibit PAN-ARB-5).

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'the shortest period possible ***within the legal system*** of the Member to implement the relevant recommendations and rulings of the DSB'."[148] The legal system of the implementing Member includes, in my view, those legal norms that stem from administrative practice in addition to those found in legislative or administrative rules. Moreover, as is the case in respect of the inter-agency implementation process devised by Colombia, conducting public consultations during the rule-making process is commonly associated with good governance practices in "contemporary polities"[149], and should, in the present case, be taken into account when determining the reasonable period of time for implementation. However, as I explain in more detail below, while I do not object to this step, I have some reservations about the time frame proposed by Colombia.

3.50. Turning to the step of obtaining an opinion from the Superintendent of Industry and Commerce, Panama contends that this is a discretionary step in the implementation of the recommendations and rulings of the DSB, because Article 7 of Law No. 1340/2009 clearly states that the Superintendent "***may*** issue a prior opinion on draft governmental regulatory measures that may have an impact on free competition".[150] While I agree that the Superintendent has the discretion to decide whether or not to issue an opinion in a given case, Article 7 also makes clear that the authorities responsible for preparing the draft decrees ***will inform*** the Superintendent of the administrative acts that they intend to enact.[151] In my opinion, this clarifies that Colombian authorities are required to inform the Superintendent, an independent authority[152], before enacting a new measure when the proposed measure may have an impact on competition in the market. In the present case, the Superintendent has already announced that he will issue an opinion as to whether the proposed decrees have an impact on the conditions of competition in Colombia.[153] On this basis, I conclude that, while some aspects of the legal framework related to obtaining an opinion from the Superintendent of Industry and Commerce may involve a discretionary component, I disagree with Panama's position that this step is unnecessary in the present case. However, as explained below, I have some reservations about the time frame proposed by Colombia.

3.51. Turning to the time periods envisaged by Colombia, I observe that some of the legal instruments it identified as the legal basis for various steps of the second stage do not appear to prescribe any minimum mandatory time frames, and, for those that do, such time frames are shorter than the time requested by Colombia in the present arbitration. For example, Decree No. 1609/2015 does not seem to establish any minimum mandatory time frames for the relevant officials within the Ministry of Trade, Industry and Tourism to prepare the draft tariff decree and its explanatory document. Moreover, Colombia has not established that Decree No. 1609/2015 provides for a minimum time period to carry out public consultations in respect of the draft tariff and customs decrees. Similarly, Law No. 1340/2009 does not appear to require the Superintendent of Industry and Commerce to issue his opinion on the potential impact of the proposed decrees on the conditions of competition in the market within a specific time frame. The same observation can be made with respect to the review of the draft tariff decree by the Ministry of Trade, Industry and Tourism and the review of the draft customs decree and its accompanying resolutions by the DIAN. Furthermore, with respect to the preparation of the customs decree by the DIAN, I observe that, while Article 2 of Resolution No. 00457/2008[154] establishes a period of 13 working days for the "formalization of procedures" within the DIAN, this resolution does not otherwise seem to set minimum periods for the DIAN's decision-making process. Similarly, Articles 3 and 4 of Decree No. 3303/2006 establish that the Triple A Committee can meet between regular sessions at any time, after 5 days of a meeting being called by its president. These considerations, in my view, show that, as the arbitrator in ***Colombia – Ports of Entry*** also noted, Colombia's legal process for enacting the tariff decree and the customs decree is

[148] Award of the Arbitrator, ***Chile – Price Band System (Article 21.3(c))***, para. 34 (quoting Award of the Arbitrator, ***US – 1916 Act (Article 21.3(c))***, para. 32. (emphasis added)

[149] Award of the Arbitrator, ***Chile – Price Band System (Article 21.3(c))***, para. 42. See also Award of the Arbitrator, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 80.

[150] Panama's submission (English translation), para. 131 (quoting Law No. 1340 of 2009, establishing rules for the protection of competition (Law No. 1340/2009), Article 7 (Exhibit COL-ARB-9)). (emphasis added by Panama)

[151] Law No. 1340/2009 (Exhibit COL-ARB-9). See also, Panama's submission (English translation), para. 130.

[152] Colombia's response to questioning at the hearing.

[153] Colombia's response to questioning at the hearing.

[154] Exhibit COL-ARB-14.

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"characterized by a considerable degree of flexibility".[155] Thus, there appears to be a certain amount of flexibility within the normal administrative process that Colombia may be expected to utilize in good faith in order to ensure prompt compliance with the recommendations and rulings of the DSB.

3.52. It appears that some of the steps outlined by Colombia could be carried out in parallel, to the extent that they are not necessarily sequential. Furthermore, there seems to be a degree of overlap in the composition of some of the Colombian authorities that take part in the various steps of the decision-making process leading to the enactment of the decrees. For instance, Article 2 of Decree No. 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.[156] A review of the minutes of the special session of Colombia's Inter-institutional Commission against Smuggling also shows that representatives of some of the entities in charge of various implementation steps were present, such as representatives from the Ministry of Trade, Industry and Tourism and the Superintendence of Industry and Commerce, as well as the Director-General of the DIAN.[157] In my opinion, the time needed to seek additional review of the implementing measures by these entities could be reduced, given that the views of these entities are likely to be taken into account within the ambit of the Inter-institutional Commission against Smuggling and the Triple A Committee. Indeed, in view of the extensive preparatory work during the first stage and the decision-making process related to the recommendation of the Triple A Committee, I consider that the time frames for the following steps outlined by Colombia could be shortened without compromising the ability of the relevant authorities to carry out the relevant tasks: the drafting of the tariff decree by the Ministry of Trade, Industry and Tourism and the drafting of the customs decree and its accompanying resolutions by the DIAN; the issuance of the opinion by the Superintendent of Industry and Commerce; and the review and signature of the decrees by the Minister of Trade and the Minister of Finance.

3.53. In addition, I recall that Colombia estimates that the preparation of the customs decree and its accompanying resolutions will take 2 months.[158] Colombia indicates that it will prepare the customs decree and the accompanying resolutions in parallel. Colombia nevertheless foresees requiring more time for this step of the process (i.e. 2 months) than for the preparation of the draft tariff decree (i.e. 1 month).[159] Colombia has not established that there is a mandatory minimum time period under Colombian law for the DIAN to draft the customs decree and its accompanying resolutions. I reiterate that some of the implementation steps could be carried out in parallel, and that there is a degree of overlap in the composition of some of the groups of Colombian authorities that take part in this process. In light of these considerations, while I acknowledge Colombia's efforts in preparing the customs decree and its accompanying resolutions in tandem, I would also expect Colombia to make use of all possible synergies and flexibilities in the decision-making process so that it may promptly bring itself into compliance with its WTO obligations. Therefore, Colombia may be expected to prepare the tariff decree, on the one hand, and the customs decree and its accompanying resolutions, on the other hand, in parallel and within a shorter time frame than the one proposed by Colombia.

3.54. I turn now to Colombia's proposed implementation steps for the final part of the second stage. Colombia indicates that it requires 2 weeks for the review of the decrees by the Secretariat of the Office of the President of the Republic and the President's signature.[160] Pursuant to Decree No. 1609/2015, draft decrees subject to the President's signature must comply with certain legal formalities before being signed by the President of Colombia. Prior to being submitted for signature by the President, draft decrees must be sent to the Secretariat of the Office of the President of the Republic together with an explanatory document addressing various issues, such as the historical background and reasons for the enactment of the measure, a description of the measure's scope of application, and an analysis of the measure's legal validity. If a draft decree

[155] Award of the Arbitrator, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 83 (quoting Award of the Arbitrator, ***US – 1916 Act (Article 21.3(c))***, para. 39).

[156] Decree No. 3303/2006 (Exhibit COL-ARB-8).

[157] Minutes of the meeting of the Inter-institutional Commission against Smuggling on 24 August 2016 (Exhibit COL-ARB-2), pp. 1-2.

[158] Colombia's submission, para. 33.

[159] Colombia's submission, fn 23 to para. 33.

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

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does not fulfil all the required legal formalities, it must be returned to the competent authority for the necessary adjustments to be made.[161] In my view, given the need to guarantee that the process of preparing the decrees adheres to the required legal formalities, the 2-week period for the review of the decrees by the Secretariat of the Office of the President of the Republic and the President's signature does not seem to be excessive.

3.55. At the same time, I note that Colombia requests 1 month for the publication of the decrees in the Official Gazette and their entry into force. This time frame, in my view, may not be fully warranted in light of the requirements under Colombian law for the publication and entry into force of decrees. Indeed, as acknowledged by Colombia, Article 2 of Law No. 1609/2013 provides that decrees will enter into force between 15 and 90 days after their publication.[162] In light of this requirement, it would be reasonable to expect that the entry into force of the tariff and customs decrees could take place no later than 15 days after their publication in the Official Gazette. Panama argues that, since Law No. 1609/2013 also establishes that in "special circumstances" decrees shall enter into force immediately following publication, ensuring compliance with Colombia's WTO commitments justifies an immediate entry into force for the proposed tariff and customs decrees.[163] I note that Panama provided evidence of several decrees prepared by Colombia's Ministry of Trade, Industry and Tourism related to tariff modifications that entered into force immediately after their publication.[164] Therefore, since Colombia is able to use the flexibility foreseen in Article 2 of Law No. 1609/2013 – as has been done in the past in relation to tariff modifications – Colombia should use such flexibility to follow the same practice in order to ensure prompt compliance with the DSB's recommendations and rulings in this dispute.

3.56. Having examined all the arguments and evidence regarding the time frames for carrying out the various steps under the second stage, while I am persuaded that these steps outlined by Colombia are warranted in order to enact the tariff decree and the customs decree, I am not convinced that Colombia cannot complete all of these steps in less than 6 months. Indeed, I recall that Colombia's normal administrative process includes a certain amount of flexibility, which Colombia may be expected to utilize in good faith in order to ensure prompt compliance with the recommendations and rulings of the DSB. Moreover, some of the steps outlined by Colombia could be carried out in parallel, to the extent that they are not necessarily sequential. Furthermore, there seems to be a degree of overlap in the composition of some of the groups of Colombian authorities involved in the various steps of the decision-making process leading to the enactment of the decrees. On this basis, I consider that the second stage described by Colombia can be completed in less than 4 months.

3.57. Finally, both Colombia and Panama submit that Article 21.2 of the DSU requires me to take into account their respective status as developing countries as a "particular circumstance[]" in determining the reasonable period of time for implementation in the present case. As noted by past arbitrators, Article 21.2 of the DSU directs arbitrators acting pursuant to 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"[165], given that the text of this provision does not limit its scope of application to either of these parties.

3.58. Colombia argues, in particular, that it is on the verge of signing a Peace Agreement and thus putting an end to the longest running internal conflict in Latin America. Colombia maintains that implementing the Peace Agreement will require adopting a comprehensive package of institutional and other legal changes, which will put significant strains on the limited resources that

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[161] Colombia's submission, paras. 31 and 37; Decree No. 1609/2015, Articles 2.1.2.1.6, 2.1.2.1.7, and 2.1.2.1.17 (Exhibit COL-ARB-7).

[162] Colombia's submission, para. 37; Law No. 1609/2013, Article 2, para. 2 (Exhibit COL-ARB-4).

[163] Panama's submission (English translation), paras. 143-145.

[164] Panama's submission (English translation), paras. 146-148 (referring to ***Decreto del Presidente de la República No. 1704 de 28 de agosto de 2015, por el cual se modifica parcialmente el Arancel de Aduanas*** (Decree of the President of the Republic No. 1704 of 28 August 2015, partially modifying the Customs Tariff) (Exhibit PAN-ARB-6); and ***Decretos emitidos entre enero de 2013 y agosto de 2016 que modifican el Arancel de Aduanas de Colombia*** (Decrees of the President of the Republic issued between January 2013 and August 2016 amending the Customs Tariff) (Exhibit PAN-ARB-7).

[165] Awards of the Arbitrators, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 106 (emphasis omitted); ***EC – Export Subsidies on Sugar (Article 21.3(c))***, para. 99 (emphasis omitted).

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the Colombian Government has at its disposal as a developing country.[166] At the hearing, Colombia added that, in the present case, implementation of the DSB's recommendations and rulings has a more severe impact on Colombia as a developing country because the compound tariff addresses money laundering, an aspect linked to Colombia's internal conflict.[167] In this respect, I observe that I have already taken into account that the compound tariff seeks to combat money laundering in my determination of the reasonable period of time by accepting the means of implementation proposed by Colombia.[168] At the same time, I also agree with Panama that the question of compliance with the DSB's recommendations and rulings is not related to the complex legislative reform that Colombia may need to carry out in the framework of its peace process. Therefore, I disagree with Colombia's argument that the package of legal and institutional changes that it may need to implement as part of the peace process should have a bearing on the determination of the reasonable period of time for implementation.

3.59. For its part, Panama contends that the compound tariff has resulted in serious injury to Panama. In particular, Panama submits that the compound tariff has resulted in lost sales, jobs, and businesses related to trade in clothing and footwear in the Colón Free Trade Zone.[169] In my view, Panama has not demonstrated that the alleged lost sales, jobs, and businesses are a consequence of the compound tariff. Thus, Panama's argumentation has not swayed me to conclude that Panama's status as a developing country requires having a shorter period of time for implementation in the present dispute.

3.60. Moreover, as indicated in the ***Colombia – Ports of Entry*** award under Article 21.3(c), 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 with respect to measures that have been subject to dispute settlement.[170] In the present case, in determining the reasonable period of time, I have recognized that the means of implementation chosen by Colombia may comprise measures seeking to combat money laundering. Beyond this recognition, I do not consider that either Colombia or Panama have demonstrated that the challenges each of them faces as a developing country are relatively more severe than the ones faced by the other party. Consequently, the developing country status of both parties does not alter my conclusion as to what I consider to be the reasonable period of time for implementation in the present dispute.

[166] Colombia's submission, para. 64.

[167] Colombia's response to questioning at the hearing.

[168] See ***supra***, paras. 3.40-3.41.

[169] Panama's submission (English translation), para. 187. Panama contends that, in 2015 alone, the compound tariff has caused Panama a loss in sales of US$135.6 million in relation to trade in clothing, and US$74.1 million in relation to trade in footwear, as well as a loss of 5,717 jobs in August 2016 compared with the level of employment recorded in December 2015. Panama also argues that the compound tariff has led to the closing down of many businesses linked to sales of footwear, apparel and textiles in the Colón Free Trade Zone. (Ibid.)

[170] Award of the Arbitrator, ***Colombia – Ports of Entry (Article 21.3(c))***, para. 106.

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4 AWARD

4.1. In light of the foregoing considerations, I determine that the "reasonable period of time" for Colombia to implement the recommendations and rulings of the DSB in this dispute is 7 months, from 22 June 2016, that is, from the date on which the DSB adopted the Panel and Appellate Body Reports in this dispute. Therefore, the reasonable period of time will expire on 22 January 2017.

Signed in the original at Geneva this 2nd day of November 2016 by:

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Giorgio Sacerdoti
Arbitrator

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ANNEX A

EXECUTIVE SUMMARY OF COLOMBIA'S SUBMISSION

1. Colombia estimates that it will require a period of **12 months** to implement the DSB's recommendations and rulings. Colombia is considering two consecutive stages of implementation. The first stage has been initiated and will take **6 months**. As part of this stage, Colombia will evaluate the specific changes that need to be introduced to the compound tariff and to its customs control and supervision procedures. The second stage will consist of the enactment of two sets of measures, the first modifying the compound tariff and the second introducing improvements to Colombia's customs control and supervision procedures. This stage will take **6 months**.

2. This period is within the guideline provided in Article 21.3 (c) and is a reasonable period of time in light of the particular circumstances of this case.

3. Firstly, as confirmed by the Appellate Body, the compound tariff is a measure to combat money laundering falling within the scope of subparagraphs (a) and (d) of Article XX, and contributes to the fight against money laundering. The fact that the compound tariff is a measure to fight money laundering is relevant for the determination of the reasonable period of time as this means that the measure cannot simply be terminated. To simply terminate the measure would imply endorsing a criminal activity (money laundering), exposing Colombian citizens to the criminal consequences of this activity, and ignoring the government's duty to enforce the Criminal Code, including Article 325. Further, the modification of the compound tariff or its replacement with alternative measures requires coordination and consultations with a number of agencies within the Colombian government.

4. Secondly, the complexity of implementation has been recognized as a relevant factor in determining the reasonable period of time. In this case, designing the implementation measure in light of the findings made by the Appellate Body and the Panel is extremely complex as it will require a rigorous economic analysis to ensure the proper calibration of the measure.

5. Thirdly, Panama's newly adopted Cabinet Decree No. 28 has generated significant antagonism internally in Colombia and undermined political support for the process of implementation, and will likely increase the domestic scrutiny of the implementation measures that Colombia may take. Press reports indicate that the tariff increase is aimed at products in which Colombia is a significant supplier of Panama, and suggest that it is a retaliatory measure against Colombia for its alleged failure to comply with the Appellate Body and Panel's findings in this case. This puts a premium on the need for appropriate internal consultations and will make it more difficult to expedite the process.

6. Fourthly, Colombia is on the verge of putting an end to the longest running internal conflict in Latin America by signing a Peace Agreement with the FARC on September 26, 2016. Colombia's internal conflict has been fuelled by the enormous profits of the drug trade, which are repatriated through money laundering operations such as those at issue in this dispute. Money laundering thus has a significant negative impact on Colombia's welfare and development. The process related to the Peace Agreement puts significant strains on the limited resources that the Colombian government has at its disposal as a developing country as this will require organizing a referendum in a short period and enacting a large package of institutional and legal changes to give effects to the terms of the Peace Agreement. By contrast, Panama has been one of the fastest growing economies worldwide. Colombia is therefore more severely affected by the problems related to its developing country status than Panama and this factor should be considered in determining the reasonable period of time.

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ANNEX B

EXECUTIVE SUMMARY OF PANAMA'S SUBMISSION*

I. INTRODUCTION

1. In its submission, Colombia requested a reasonable period of time for implementation of 12 months. Panama considers that this period of time is unfounded. In the opinion of Panama, the correct period of time is 66 days. However, the establishment of a time period that would have already expired by the time the Arbitrator issued his award would result in the impairment of Panama's right to apply retaliatory measures under Article 22 of the DSU, since authorization to do so expires 30 days after the expiry of the reasonable period of time. Therefore, in order to prevent such impairment to Panama's rights, and given the particular circumstances of these proceedings, Panama would not object if Colombia were granted an additional 13 days from when the award is issued to take the relevant steps to ensure compliance with the recommendations and rulings of the DSB.

II. WHAT HAS TO BE IMPLEMENTED IN THIS DISPUTE IS A VERY SPECIFIC MATTER

2. Colombia's implementation obligation is limited to removing the compound tariff's inconsistency with Article II of the GATT 1994, that is, to ensuring that the tariff applicable to the affected products does not exceed the bound levels set out in the Schedule of Concessions. This issue could not be clearer.

3. Accordingly, any period of time for carrying out action that is unrelated to or goes beyond the removal of the inconsistency with Article II of the GATT 1994 cannot be included in the reasonable period of time that is the subject of this arbitration. None of the measures suggested by Colombia seek to ensure that the compound tariff ceases to exceed its bound tariff rates; instead they focus on refining and improving Colombia's criminal policy to combat money laundering.

4. Furthermore, the period of time should not be considered for implementing any action proposed by Colombia that seeks to ensure that its measure is justified by Article XX of the GATT. As has been argued, the only valid actions for the purposes of calculating the reasonable period are those that genuinely seek to ensure that the import tariffs on the products in question respect Colombia's bound tariff rates in light of the interpretation of Article II given by the Appellate Body.

III. THE 12-MONTH PERIOD REQUESTED BY COLOMBIA IS NOT THE SHORTEST PERIOD POSSIBLE

A. THE STEPS AND TIME PERIODS PROVIDED FOR STAGE 1 OF IMPLEMENTATION PROPOSED BY COLOMBIA MUST BE DISMISSED AS UNFOUNDED

5. Colombia requests a period of six months for the first stage of its implementation process, which would involve two areas of action. Both areas, however, are actions unrelated to the implementation of the rulings and recommendations of the DSB. Both are aimed at improving Colombia's criminal policy on money laundering, which is extraneous to ensuring that Colombia's tariffs do not exceed the bound rates. Accordingly, these actions, as described, are not relevant to the implementation of Colombia's obligations under Article II of the GATT 1994.

6. Even assuming for the sake of argument that the processes envisaged in Stage 1 did deserve to be included in the calculation of the reasonable period of time, Colombia does not provide any basis for: (i) the need to carry out these steps; and (ii) the proposed duration of these steps.

7. To conclude, Panama requests the Arbitrator to dismiss the time periods contained in Stage 1. Panama will explain below the time frame that corresponds to Stage 1.

* This text was originally submitted in Spanish by Panama.

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B. THE STEPS AND TIME PERIODS ENVISAGED FOR STAGE 2 PROPOSED BY COLOMBIA ARE ALSO UNFOUNDED

8. Colombia confines itself to asserting that it needs six months to implement the steps described in Stage 2, once again without providing any basis. Panama maintains that Colombia has not shown that the requested reasonable period of time is the shortest period for implementing the recommendations and rulings of the DSB. This may be summarized in the following table:

STAGE 1: DESIGN OF THE MEASURE	
Step	**Comment by Panama**
Step 1: Establishment of Trade Ministry task force responsible for reports and design of roadmap.	Step necessary for reviewing Panel and Appellate Body decisions. Colombia's time period lacks basis.
Step 2: Consultation with Inter-Institutional Commission Against Smuggling. Establishment of working groups to design the implementing measure and subsequent approval.	Criminal policy matter, implementation of anti-money-laundering law or security, unrelated to the required tariff modification.
STAGE 2: ENACTMENT OF THE MEASURE	
Step	**Comment by Panama**
Step 1: Recommendation of the Triple A Committee	Step appropriate; time period has no basis
Step 2: (i) Preparation of Trade Ministry decree (ii) Preparation of DIAN decree; issuing of DIAN resolution	(i) Step appropriate (ii) Criminal policy matter, implementation of anti-money-laundering law or security, unrelated to the required tariff modification.
Step 3: Publication of draft decree for public comment	Discretionary factor; in any case, period excessive
Step 4: Opinion of the Superintendent of Industry and Commerce	Step discretionary and irrelevant
Step 5: Signature by Minister of Trade and Minister of Finance	Step appropriate; time period has no basis
Step 6: Approval and signing by President	Step appropriate; time period has no basis
Step 7: Entry into force	Discretionary factor; time period without basis in recent practice

IV. A PERIOD OF 66 DAYS IS THE SHORTEST PERIOD FOR COLOMBIA TO BRING ITS MEASURE INTO CONFORMITY WITH WTO LAW

A. STAGE 1: DESIGN OF THE MEASURE

1. Review of the reports and design of the initial roadmap

9. Panama considers that the time period that should be allocated for the assessment of the Appellate Body and Panel reports and for designing a roadmap should not exceed 18 calendar days, as that is the period to be found in Colombia's evidence for the design of the so-called "roadmap".

2. Design of the implementing measure

10. Taking into account the main areas of work identified by the Trade Ministry in step 1 and in light of Panama's considerations that the fulfilment of criminal policy objectives cannot provide a basis for granting a reasonable period of time for compliance with obligations under Article II of the GATT 1994, of the three areas of work identified by Colombia only one is relevant. That area of work is the one that concerns the "tariff measure compatible with the GATT 1994".

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11. In the tariff context, the implementation options that may be compatible with Article II of the GATT are limited. There are two known options:

a. To let the compound tariff expire: Panama considers that for the design of an implementing measure based on returning to the already existing ***ad valorem*** tariff, the allocated time period should be zero (0) days, since the measure being designed already exists.

b. A "capping mechanism" to ensure that the ***ad valorem*** equivalents of specific duties would not exceed the tariff bindings: Colombia would not need more than one day to design this capping mechanism, as the only thing required would be to establish certain "equilibrium prices", which involves a simple arithmetical process.

12. Taking into account the actions and options adopted by Colombia in Decree No. 1229, Panama considers that Colombia has a period of zero (0) days for the design of a measure. However, if Colombia were to opt for the establishment of the capping mechanism, the time period would be one (01) day.

13. Consequently, Panama considers that for Stage 1, the corresponding time period is 18 or 19 days, depending on the implementation option selected by Colombia.

B. STAGE 2: ENACTMENT OF THE MEASURE

14. Panama considers the time period of six months requested by Colombia for the implementation of the seven steps of Stage 2 to be excessively divorced from the practice of modifying the compound tariff; this would indicate that some steps are unnecessary, that they can be conducted in parallel, or that their time periods have increased without any basis. Panama concludes that, on the basis of the objective evidence, the implementation of Stage 2 would require 47 days.

15. Considering that for Stage 1 the appropriate time period is 18 or 19 days, and that for Stage 2 the appropriate time period is 47 days, Panama takes the position that the shortest period possible for implementation of the recommendations and rulings of the DSB is 65 or 66 days, depending on the implementation option chosen by Colombia, as from 22 June 2016. Therefore, the reasonable period of time for Colombia expired on 26 or 27 August 2016.

16. While, objectively, it would be correct to set a reasonable period of time corresponding to that date, such a finding in isolation would give rise to impairment of Panama's rights under Articles 22.2 and 22.6 of the DSU.

C. SPECIAL CIRCUMSTANCE OF THE CASE: IMPAIRMENT OF PANAMA'S RIGHTS

17. As the possibility of obtaining compensation (Article 22.2) and recourse to the suspension of concessions or other obligations (Article 22.6) are conditional upon the expiry of the reasonable period of time (and in the latter case, the submission of the request within 30 days of the expiry of the reasonable period of time), a finding by the Arbitrator that the reasonable period of time expired on 27 August 2016, would have the effect of diminishing Panama's rights under these provisions. This situation would be contrary to the object and purpose of these DSU rules and to Article 3.5 of the DSU.

18. Taking this situation into account, which in Panama's view qualifies as a special circumstance of the case within the meaning of Article 21.3(c), Panama requests the Arbitrator to recognize that Colombia should have brought its measure into conformity by 27 August 2016. However, in view of the fact that the establishment of a time period that had already expired would affect Panama's rights under Articles 22.2 and 22.6 of the DSU, Panama considers that the reasonable period of time should be established prospectively from the issuing of the award. Thus, Panama suggests that the reasonable period should expire 13 days after the arbitration award has been issued and circulated. Panama bases the period of 13 days on the minimum period used by Colombia to process a tariff modification from the submission of the proposal to the Triple A Committee until its entry into force following promulgation by the President. This was the case of Decree No. 343/2016 by which Colombia modified its tariff.

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V. THE PARTICULAR CIRCUMSTANCES CITED BY COLOMBIA DO NOT APPLY

19. Colombia's first argument is that the recent measures taken by Panama make implementation more complicated. This argument is unfounded.

20. Colombia does not adequately explain how this argument could have an impact on the concrete stages of the implementation process. Colombia asserts that the situation could undermine political support for the implementation process. This type of consideration is political and has no place in a technical arbitration that should be based objectively on what a Member's legal system and practice require to implement its WTO obligations. The criterion of "contentiousness" and "political sensitivity" of an implementing measure are not relevant "particular circumstances" within the meaning of Article 21.3(c).

21. Colombia's second argument is that it is a developing country, which would justify a longer reasonable period of time. This argument is also unfounded. Panama does not question the complexity of the political process which Colombia is undergoing. However, the clear fact is that the question of compliance with the rulings and recommendations of the DSB is something that has nothing whatsoever to do with the political and legislative reform that Colombia has to carry out in the framework of its peace process. In any case, the issue in question affects Panama just as much as, if not more seriously than, Colombia.

VI. CONCLUSION

22. Colombia has failed to show that the proposed time period is the shortest period within its legal system for implementing the recommendations and rulings of the DSB. A reasonable period of time of 66 days is amply sufficient and perfectly reasonable for Colombia to implement the recommendations and rulings of the DSB. However, owing to the circumstances of the case relating to the possible impairment of Panama's rights under Article 22 of the DSU, Panama will not oppose, on an exceptional basis, the Arbitrator granting 13 days from the date of issue of his award for Colombia to bring the compound tariff into conformity with Article II of the GATT 1994.

23. In the present case, while Colombia has discretion in deciding on the manner of implementation of these recommendations and rulings, its obligation is confined to ensuring that the tariff applicable to the products affected by the compound tariff does not exceed the tariff rates bound in its Schedule of Concessions.

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