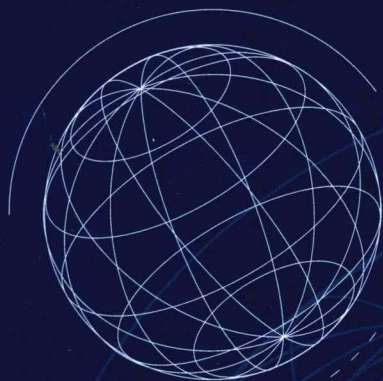




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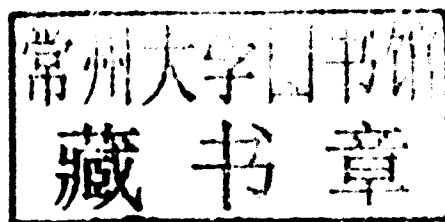
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COLOMBIA - INDICATIVE PRICES AND RESTRICTIONS ON PORTS OF ENTRY

ARBITRATION UNDER ARTICLE 21.3(c) OF THE DSU

Award of the Arbitrator
WT/DS366/13

Circulated to Members on 2 October 2009

Parties
Colombia
Panama

Arbitrator:
Giorgio Sacerdoti

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<i>Australia – Salmon (Article 21.3(c))</i>	Award of the Arbitrator, <i>Australia – Measures Affecting Importation of Salmon – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS18/9, 23 February 1999, DSR 1999:I, 267
<i>Brazil – Retreaded Tyres (Article 21.3(c))</i>	Award of the Arbitrator, <i>Brazil – Measures Affecting Imports of Retreaded Tyres – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS332/16, 29 August 2008
<i>Canada – Pharmaceutical Patents (Article 21.3(c))</i>	Award of the Arbitrator, <i>Canada – Patent Protection of Pharmaceutical Products – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS114/13, 18 August 2000, DSR 2002:I, 3
<i>Chile – Alcoholic Beverages (Article 21.3(c))</i>	Award of the Arbitrator, <i>Chile – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS87/15, WT/DS110/14, 23 May 2000, DSR 2000:V, 2583
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<i>Colombia – Ports of Entry</i>	Panel Report, <i>Colombia – Indicative Prices and Restrictions on Ports of Entry</i> , WT/DS366/R and Corr.1, adopted 20 May 2009
<i>EC – Bananas III (Article 21.3(c))</i>	Award of the Arbitrator, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS27/15, 7 January 1998, DSR 1998:I, 3
<i>EC – Chicken Cuts (Article 21.3(c))</i>	Award of the Arbitrator, <i>European Communities – Customs Classification of Frozen Boneless Chicken Cuts – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS269/13, WT/DS286/15, 20 February 2006

Short Title	Full Case Title and Citation
<i>EC – Export Subsidies on Sugar</i> (Article 21.3(c))	Award of the Arbitrator, <i>European Communities – Export Subsidies on Sugar – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS265/33, WT/DS266/33, WT/DS283/14, 28 October 2005, DSR 2005:XXIII, 11581
<i>EC – Hormones</i> (Article 21.3(c))	Award of the Arbitrator, <i>EC Measures Concerning Meat and Meat Products (Hormones) – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS26/15, WT/DS48/13, 29 May 1998, DSR 1998:V, 1833
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<i>Japan – DRAMs (Korea)</i> (Article 21.3(c))	Award of the Arbitrator, <i>Japan – Countervailing Duties on Dynamic Random Access Memories from Korea – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS336/16, 5 May 2008
<i>Korea – Alcoholic Beverages</i> (Article 21.3(c))	Award of the Arbitrator, <i>Korea – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS75/16, WT/DS84/14, 4 June 1999, DSR 1999:II, 937
<i>US – 1916 Act</i> (Article 21.3(c))	Award of the Arbitrator, <i>United States – Anti-Dumping Act of 1916 – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS136/11, WT/DS162/14, 28 February 2001, DSR 2001:V, 2017
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Short Title	Full Case Title and Citation
<i>US – Offset Act (Byrd Amendment)</i> (Article 21.3(c))	Award of the Arbitrator, <i>United States – Continued Dumping and Subsidy Offset Act of 2000 – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS217/14, WT/DS234/22, 13 June 2003, DSR 2003:III, 1163
<i>US – Section 110(5) Copyright Act</i> (Article 21.3(c))	Award of the Arbitrator, <i>United States – Section 110(5) of the US Copyright Act – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS160/12, 15 January 2001, DSR 2001:II, 657
<i>US – Softwood Lumber IV</i>	Appellate Body Report, <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i> , WT/DS257/AB/R, adopted 17 February 2004, DSR 2004:II, 571
<i>US – Softwood Lumber IV</i> (Article 21.5 – Canada)	Appellate Body Report, <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 of the DSU</i> , WT/DS257/AB/RW, adopted 20 December 2005, DSR 2005:XXIII, 11357
<i>US – Stainless Steel (Mexico)</i> (Article 21.3(c))	Award of the Arbitrator, <i>United States – Final Anti-Dumping Measures on Stainless Steel from Mexico – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS344/15, 31 October 2008
<i>US – Zeroing (EC)</i> (Article 21.5 – EC)	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS294/AB/RW and Corr.1, adopted 11 June 2009

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

Abbreviation	Description
Decree 403/1993	<i>Decreto 403 del 3 de marzo de 1993 (Arbitration Exhibit COL-5)</i>
Decree 1071/1999	<i>El Presidente de la República de Colombia, Decreto 1071 de 1999 (junio 26), Diario Oficial No. 43.615 de 26 de junio de 1999 (Arbitration Exhibit PAN-12)</i>
Decree 2553/1999	<i>(Colombia's Ministry of Foreign Trade), Ministerio de Comercio Exterior, Decreto 2553 de 1999 (diciembre 23), Diario Oficial No. 43.827 de 23 de diciembre de 1999</i>
Decree 2685/1999	<i>(Colombia's Ministry of Finance), Ministerio de Hacienda y Crédito Público, Decreto 2685 de 1999 (diciembre 28), Diario Oficial No. 43.834 de 30 de diciembre de 1999 (Panel Exhibit COL-1)</i>
Decree 210/2003	<i>(Department of Public Administration) Departamento Administrativo de la Función Pública, Decreto 210 de 2003 (febrero 3), Diario Oficial No. 45.086 de 3 de febrero de 2003</i>
Decree 4669/2005	<i>Cámara de Representantes de Colombia, Decreto 4669 de 2005 (diciembre 21), Diario Oficial No. 46.130 de 22 de diciembre de 2005</i>
Decree 3303/2006	<i>(Colombia's Ministry of Trade, Industry and Tourism), Ministerio de Comercio, Industria y Turismo, Decreto 3303 de 2006 (septiembre 25), Diario Oficial No. 46.402 de 25 de septiembre de 2006</i>
Decree 4646/2006	<i>(Colombia's Ministry of Finance), Ministerio de Hacienda y Crédito Público, Decreto 4646 de 2006 (diciembre 27), Diario Oficial No. 46.494 de 27 de diciembre de 2006</i>
Decree 4048/2008	<i>(Colombia's Ministry of Finance), Ministerio de Hacienda y Crédito Público, Decreto 4048 de 2008 (octubre 22), Diario Oficial No. 47.150 de 22 de octubre de 2008</i>

Abbreviation	Description
Resolution 4240/2000	(Colombia's Directorate of Taxes and National Customs), <i>Dirección de Impuestos y Aduanas Nacionales, Resolución 4240 de 2000 (junio 2), Diario Oficial No 44.037 de 9 de junio de 2000</i> (Panel Exhibit COL-2)
Resolution 12950/2006	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 12950 de 2006 (octubre 30)</i> (Arbitration Exhibit PAN-1)
Resolution 12956/2006	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 12956 de 2006 (octubre 30)</i> (Arbitration Exhibit PAN-1)
Resolution 13034/2006	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 13034 de 2006 (octubre 31)</i> (Arbitration Exhibit PAN-1)
Resolution 7373/2007	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 7373 de 2007 (junio 22), Diario Oficial No. 46.678 de 3 julio de 2007</i> (Panel Exhibit PAN-34).
Resolution 7510/2007	Replaced or modified by Resolution No. 11412/2007
Resolution 7511/2007	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 7511 de 2007 (26 junio)</i> (Panel Exhibit PAN-10)
Resolution 7512/2007	Replaced or modified by Resolution No. 11415/2007
Resolution 7513/2007	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 7513 de 2007 (26 junio)</i> (Panel Exhibit PAN-12)
Resolution 7637/2007	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 7637 de 2007 (junio 28), Diario Oficial No. 46.681 de 6 de julio de 2007</i> (Panel Exhibit PAN-36)
Resolution 11412/2007	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 11412 de 2007 (28 septiembre)</i> (Panel Exhibit PAN-15)
Resolution 11414/2007	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 11414 de 2007 (28 septiembre)</i> (Panel Exhibit PAN-14)

Abbreviation	Description
Resolution 11415/2007	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 11415 de 2007 (28 septiembre) (Panel Exhibit PAN-16)</i>
Resolution 457/2008	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 457 de 2008 (noviembre 20), Diario Oficial No. 47.198 de 20 de noviembre de 2008 (Arbitration Exhibit COL-1)</i>
Resolution 1749/2008	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 1749 de 2008 (17 diciembre) (Arbitration Exhibit PAN-5)</i>
Resolution 5516/2009	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 5516 de 2009 (22 mayo) (Arbitration Exhibit PAN-4)</i>
Resolution 6816/2009	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 6816 de 2009 (30 junio) (Arbitration Exhibit PAN-6)</i>
Resolution 8812/2008	<i>Dirección de Impuestos y Aduanas Nacionales, Resolución 8812 de 2008 (17 septiembre), Diario Oficial No. 47.124 de 26 de septiembre de 2008 (Arbitration Exhibit PAN-3)</i>

ABBREVIATIONS USED IN THIS AWARD

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

I. INTRODUCTION

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

2. On 20 May 2009, the DSB adopted² the Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry* (the "Panel Report").³ The Panel Report contained, *inter alia*, the following findings: (i) Article 128.5 e) of Decree 2685 of 28 December 1999 ("Decree 2685/1999")⁴ and Article 172.7 of Resolution 4240 of 2 June 2000 ("Resolution 4240/2000")⁵ issued by Colombia's Directorate of Taxes and National Customs (*Dirección de Impuestos y Aduanas Nacionales*) ("DIAN"), as well as the various resolutions establishing indicative prices, are inconsistent "as such" with the methods of valuation set out in Articles 1, 2, 3, 5, 6, 7.2(b), and 7.2(f) of the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* (the "*Agreement on Customs Valuation*")⁶; and (ii) Resolution 7373 of 22 June 2007 ("Resolution 7373/2007")⁷, as amended by Resolution 7637 of 28 June 2007⁸ (the "ports of entry measure") is inconsistent with Article I.1, the first and second sentences of Article V:2, the first sentence of Article V:6, and Article XI:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994").⁹ The Panel further rejected Colombia's defence that the ports of entry measure was justified under Article XX(d) of the GATT 1994 as a measure necessary to secure compliance with Colombia's customs laws and regulations.¹⁰

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

¹ WT/DS366.

² WT/DS366/9.

³ WT/DS366/R and Corr.1.

⁴ (Colombia's Ministry of Finance) *Ministerio de Hacienda y Crédito Público, Decreto 2685 de 1999 (diciembre 28), Diario Oficial No. 43.834 de 30 de diciembre de 1999* (Panel Exhibit COL-1).

⁵ (DIAN) *Dirección de Impuestos y Aduanas Nacionales, Resolución 4240 de 2000 (junio 2), Diario Oficial No. 44.037 de 9 de junio de 2000* (Panel Exhibit COL-2).

⁶ Panel Report, paras. 8.1 and 8.2.

⁷ *Dirección de Impuestos y Aduanas Nacionales, Resolución 7373 de 2007 (junio 22), Diario Oficial No. 46.678 de 3 julio de 2007* (Panel Exhibit PAN-34).

⁸ *Dirección de Impuestos y Aduanas Nacionales, Resolución 7637 de 2007 (junio 28), Diario Oficial No. 46.681 de 6 de julio de 2007* (Panel Exhibit PAN-36).

⁹ Panel Report, para. 8.5.

¹⁰ Panel Report, para. 8.7.

¹¹ WT/DSB/M/270, para.51.

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

5. Panama and Colombia were unable to agree on an arbitrator as contemplated by footnote 12 to Article 21.3(c) of the DSU. Therefore, by letter dated 24 July 2009, Panama requested that the Director-General appoint an arbitrator pursuant to the authority conferred upon him by that provision. The Director-General appointed me as Arbitrator on 30 July 2009, after consulting the parties. I informed the parties of my acceptance of the appointment by letter dated 3 August 2009.¹³

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

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

II. ARGUMENTS OF THE PARTIES

A. Colombia

8. Colombia requests that I determine the "reasonable period of time" for implementation of the recommendations and rulings of the DSB in this dispute to be 15 months from the date of adoption by the DSB of the Panel Report, that is, until 20 August 2010.¹⁵

9. As a matter of principle, Colombia highlights that "the choice of the means of implementation is the prerogative of the implementing Member."¹⁶ Therefore, an implementing Member has a "measure of discretion" in selecting the means of implementation, which includes the choice of either "withdrawing or modifying" the inconsistent measure.¹⁷ Thus, the view expressed by previous

¹² WT/DS366/10.

¹³ WT/DS366/11.

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

¹⁵ Colombia's submission, paras. 3, 4, 45, 65, and 115.

¹⁶ Colombia's submission, para. 23.

¹⁷ Colombia's submission, para. 22 (referring to Award of the Arbitrator, *Brazil – Retreaded Tyres (Article 21.3(c))*), paras. 57 and 58, where the arbitrator stated that Brazil could "remain within the range of permissible actions to comply" by lifting the import ban to remove the inconsistency with Article XI of the GATT 1994 or by modifying the existing ban to rectify the inconsistencies with the