CANADA – PATENT PROTECTION OF PHARMACEUTICAL PRODUCTS

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

Award of the Arbitrator
James Bacchus
WT/DS114/13

Circulated to Members on 18 August 2000

I. INTRODUCTION

1. On 7 April 2000, the Dispute Settlement Body (the "DSB") adopted the Panel Report in *Canada – Patent Protection of Pharmaceutical Products* ("*Canada – Pharmaceutical Patents*").[1] On 25 April 2000, Canada informed the DSB, pursuant to Article 21.3 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), that it would implement the recommendations and rulings of the DSB in this dispute; however, Canada said that it would require a "reasonable period of time" to do so, under the terms of Article 21.3 of the DSU.

2. Consultations between Canada and the European Communities on the duration of the reasonable period of time for implementation occurred but these did not result in agreement.

3. By joint letter of 20 June 2000, Canada and the European Communities notified the DSB that they had agreed that the duration of the reasonable period of time for implementation should be determined through binding arbitration, under the terms of Article 21.3(c) of the DSU, and that I should act as Arbitrator. The parties also indicated in that letter that they had agreed to extend the time period for the arbitration, fixed at 90 days by Article 21.3(c) of the DSU, until 31 August 2000. Notwithstanding this extension of the time period, the parties stated that the arbitration award would be deemed to be an award made under Article 21.3(c) of the DSU. My acceptance of this designation as Arbitrator was conveyed to the parties by letter of 21 June 2000.

4. Written submissions were received from Canada and the European Communities on 6 July 2000, and an oral hearing was held on 20 July 2000.

II. ARGUMENTS OF THE PARTIES

A. Canada

5. Canada submits that the implementation of the DSB's recommendations and rulings in this case can be accomplished through regulatory change rather than through legislative amendment, which Canada submits is usually more time

[1] WT/DS114/R.

consuming.[2] Given the extent of consultations required in this contentious field, Canada believes that the regulatory process can be carried out and finalized in a maximum of 11 months' time from the date of adoption of the Panel Report.

6. In its submission, Canada explains the process by which changes are made to its regulatory regime. According to Canada, the Government of Canada Regulatory Policy ("Regulatory Policy") states that the use of the government's regulatory powers should result in "the greatest net benefit to Canadian society". Accordingly, authorities who propose the exercise of regulatory power are obliged to demonstrate that the benefits of regulating clearly outweigh the costs, and that an effort has been made to structure the regulatory measures so as to maximize the benefits to Canadians and minimize the costs.

7. Canada explains that, in the normal course, the department with responsibility for the area in which the problem has arisen, in this case, the Department of Industry, should include information about the problem in its Report on Plans and Priorities, a document which is tabled in the Canadian Parliament. Where a potential regulatory initiative has not been so planned and reported, the department must nevertheless explain the rationale for its planned regulatory proposal regarding the problem in its Departmental Regulatory Plan. In the Department of Industry, that information is reviewed by the Department's Senior Policy Committee, which evaluates and categorizes the proposal.

8. The responsible department is then required to draft a proposed regulation. The department must also prepare a Regulatory Impact Analysis Statement (the "RIAS"), which describes the purpose of the draft regulation, the alternatives considered, a cost-benefit analysis, the results of consultations with interested parties, the department's response to the concerns raised, and how the regulation will be enforced.

9. Canada further clarifies that, pursuant to the provisions of the Canadian *Statutory Instruments Act*, the proposed regulation and supporting documentation, including the RIAS, must be produced in both English and French, Canada's two official languages. They must then be approved by the responsible department's legal services and senior management, and sent to the Clerk of the Privy Council and to the Deputy Minister of Justice for review. The Privy Council Office ensures that the proposal is consistent with the government's overall program and that the responsible department has adequately considered the communications aspects of the proposed regulatory action. The Regulations Section of the Department of Justice examines the regulation to ensure that it has a proper legal basis and, in particular, that "it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*".[3]

10. Canada explains that the Regulatory Policy also requires that the complete documentation in support of a proposal be sent to the Regulatory Affairs and Orders in Council Secretariat of the Privy Council Office, which is the agency responsible for administering the Policy. The Secretariat reviews the proposal to ensure that it is consistent with the Policy and, in particular, that: the responsible department has considered other alternatives; the benefits of regulation clearly outweigh the costs; adequate consultation with the public has taken place, to allow Canadians to

[2]Canada's submission, para. 9.
[3]Canada's submission, para. 14.

understand the proposed regulation and to participate in the process; and the responsible department has cooperated with Canada's provincial governments to ensure that the proposed regulation does not duplicate or overlap any provincial measure.

11. Once these reviews have been completed, the Minister of the responsible department approves the regulation and supporting documentation and submits them to the Privy Council Office for consideration by the Cabinet's Special Committee of Council (the "SCC"), which is the Cabinet committee that gives Governor in Council approval for the pre-publication of a draft regulation and its accompanying RIAS. The Regulatory Policy requires pre-publication of a regulation in order to provide the Canadian public at large, as opposed to the more limited constituencies initially consulted by the responsible department, with an opportunity to comment. Upon approval by the SCC Ministers, the regulation and its RIAS are published in the Canada Gazette, Part I, and must be open for public comment for at least 30 days.

12. Comments received from the public must be weighed on their merits and changes to the proposed regulation must be considered. If the proposed regulation is changed, the Department of Justice Regulations Section must again examine and approve the revised version before it is sent for final approval by SCC Ministers. If the proposed regulation is amended, the RIAS must also be changed to reflect the amendment.

13. Ministers consider each proposed regulation on its own merits. If they approve the regulation, it is registered under a statutory orders and regulations number within seven days of the Governor General's signature. The regulation will come into force on a date specified by the Governor in Council or, where not so specified, on the day of registration. The approved regulation and its RIAS are then forwarded for publication in the Canada Gazette, Part II, which is published by the Queen's Printer every second Wednesday. Pursuant to subsection 11(1) of the *Statutory Instruments Act*, publication must take place no later than 23 days after registration. Once published, the regulation becomes enforceable as law, as the public is deemed to have notice of the change in the regulatory regime.

14. Canada believes that the process of drafting, consultation, approval, promulgation and registration of the proposed regulation in this case can be accomplished in a maximum of 11 months time from the date of the adoption of the Panel Report by the DSB. Canada breaks this period down as follows:

(a) 2 weeks for identification and assessment, which involves the preparation of an explanation as to why the measure is needed and a reference by the Department of Industry to its Senior Policy Committee for evaluation of the Regulatory Plan and review of the regulatory proposal;

(b) 3 months for the drafting of the proposed regulation and RIAS; review by relevant Department of Industry committees; review and approval by Department of Industry legal services; development of a communications plan; forwarding of the proposed regulation for examination by Department of Justice Regulations Section; informal review by the Privy Council Office; final Department of Industry review and approval for pre-publication and signature of the Minister of Industry;

(c) 2 weeks for the formal submission of the regulatory package to the Privy Council Office for submission to SCC for pre-

publication and approval. The material must be submitted at least one week in advance of a scheduled meeting. Meetings are generally held weekly, but less frequently during Parliamentary recesses. In this respect, Canada notes that its Parliament is currently in recess until the end of September 2000;

(d) 1 month and 1 week for the pre-publication in Canada Gazette, Part I and receipt of questions and comments from the public;

(e) 1-3 months for the response to public comments; amendment of the regulation and RIAS as required; resubmission to Department of Industry legal services and Department of Justice Regulations Section; review and approval for final publication and signature of the Minister of Industry; and

(f) 2 weeks for the formal submission of the regulatory package to the Privy Council Office for submission to SCC for final publication approval; final publication in Canada Gazette, Part II.[4]

15. Canada submits that although the above breakdown totals 8-9 months, it may not be possible to carry out the needed consultations during that time, or to receive the views and advice from all of the relevant constituencies, since critical aspects of the process will occur during the summer vacation period of July and August. Accordingly, in order to ensure that these essential steps are properly carried out, Canada argues that the total period should be increased to approximately 10-11 months.

16. Having explained its regulatory process, Canada turns next to a review of previous arbitrations under Article 21.3(c) of the DSU. Canada submits that, in previous arbitrations, arbitrators have consistently begun their assessments by considering the guideline contained in Article 21.3(c) itself. A guideline for the arbitrator should be that the reasonable period of time to implement DSB recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report.

17. Canada submits that the reasonable period of time may be shorter or longer, depending on particular circumstances. Canada recalls that, as the arbitrator in *Australia - Measures Affecting Importation of Salmon* ("*Australia – Salmon*") put it, "what constitutes a 'reasonable period of time' depends upon the action which [the implementing Member] takes under its legal system to implement the recommendations and rulings of the DSB."[5]

18. Canada believes that as it has undertaken to achieve compliance in significantly less time than is contemplated by the Article 21.3(c) guideline, the onus is clearly on the European Communities, as the complaining Member, to establish that there are "particular circumstances" to justify an even shorter period of time. Canada adds that, in determining whether the European Communities has discharged its burden of proof in this case, it will be important to bear in mind that Canada, as the implementing Member, is not obliged to take unusual steps in order to bring its law into compliance with its obligations.

[4]Canada's submission, para. 19.

[5]Award of the Arbitrator under Article 21.3(c) of the DSU, *Australia – Salmon*, WT/DS18/9, 23 February 1999, DSR 1999:I, 267, para. 33.

19. Canada emphasizes the statement of the arbitrator in *Korea - Taxes on Alcoholic Beverages* ("*Korea – Alcoholic Beverages*") that, while the reasonable period of time should be the shortest possible within the legal system of the implementing Member, "this does not require a Member, in my view, to utilize an *extraordinary* legislative procedure, rather than the *normal* legislative procedure, in every case."[6] Canada considers that this approach is in keeping with the discretion that is afforded to WTO Members by Article 1.1 of the *Agreement on Trade-related Aspects of Intellectual Property Rights* (the "*TRIPS Agreement*") "to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice".

20. Canada considers that it will achieve compliance with its obligations under the *TRIPS Agreement* by revoking the regulations that are essential to the existence of the stockpiling exception. According to Canada, Subsection 55.2(2) of the *Patent Act* will thereby be rendered of no legal force or effect. Revocation of the Regulations will completely deprive subsection 55.2(2) of the *Patent Act* of any meaning or effect. As a result, no one who has availed themselves of the protection of subsection 55.2(1) -- the "regulatory review" exception -- for the purposes of developing and submitting samples of a competing version of a patented product to regulatory authorities for their review will, on the coming into force of the revoking regulation, be entitled to further manufacture or further stockpile products prior to the expiration of the term of the relevant patent. The protection from infringement liability created by the combination of the theory expressed in subsection 55.2(2) and the practical substance given to that theory by the Regulations will be wholly terminated by the revocation.

21. Canada emphasizes, however, that "the revocation of the *Manufacturing and Storage of Patented Medicines Regulations* will be a very sensitive political matter in Canada", and, thus, that extensive consultations with stakeholders, interest groups and the general public will be required.[7] In Canada's view, a maximum of 11 months' time is, therefore, needed in order to conduct the necessary consultations, as well as to comply with the various procedural requirements of the *Statutory Instruments Act* and the Regulatory Policy.

22. Canada, therefore, requests the arbitrator to rule that 11 months from 7 April 2000, the date of adoption of the Panel Report by the DSB, is the reasonable period of time for the implementation of that ruling in this case. Thus, Canada proposes a "reasonable period of time" for implementation that would end on 7 March 2001.

B. European Communities

23. The European Communities submits that to implement fully the recommendations and rulings of the DSB, Canada must repeal Section 55.2(2) of its *Patent Act*, which the Panel in this dispute found to be inconsistent with the requirements of Article 28(1) of the *TRIPS Agreement*.

24. The European Communities is of the view that implementation of the DSB recommendations in this case requires the repeal of Section 55.2(2) of the *Patent Act*, that is, legislative, and not regulatory action. The European Communities

[6]Award of the Arbitrator under Article 21.3(c) of the DSU, *Korea – Alcoholic Beverages*, WT/DS/75/16, WT/DS84/14, 4 June 1999, DSR 1999:II, 937, para. 42.

[7]Canada's submission, para. 28.

considers that "it is only necessary to repeal a single subparagraph, which is separable from the remainder of the provisions of which it forms part".[8] The European Communities argues that "this can be performed in a period of time significantly shorter than the indicative maximum period" of 15 months provided for in Article 21.3(c) of the DSU.[9] The European Communities argues that, in any event, the "reasonable period of time" in this matter must not be a period longer than 12 months counted from 7 April 2000, the date of the adoption of the Panel Report in this dispute by the DSB.

25. The European Communities submits that the ordinary meaning of the language in Article 21.3(c) of the DSU indicates that 15 months is a guideline for the arbitrator and "sets an outer limit or a maximum in the usual case".[10] Thus, the European Communities contends that when implementation can be effected by administrative means, the reasonable period of time should be considerably shorter than 15 months. In addition, the European Communities asserts that Article 21.3(c) of the DSU must be interpreted in context, and, in particular in the context of Articles 3.3 and 21.1 of the DSU, which place particular emphasis on the prompt compliance of recommendations and rulings of the DSB.

26. The European Communities also highlights the statement of the arbitrator in the *EC Measures Affecting Meat and Meat Products* (*Hormones*) ("*European Communities – Hormones*") arbitration, that the reasonable period of time under Article 21.3(c), "should be the shortest period possible within the legal system of the Member to implement the recommendations and rulings of the DSB."[11]

27. The European Communities acknowledges that it is not within the mandate of the arbitrator under Article 21.3(c) of the DSU to decide on the precise ways and means Canada must use to implement the recommendations and rulings of the DSB. However, in order to be able to assess if implementation can occur immediately, and in case this proves to be impracticable to assess the length of the reasonable period, "it is fundamental for the arbitrator to define the nature of the measure necessary to implement the recommendations and rulings of the DSB".[12]

28. According to the European Communities, it is important to note that "implementation of the recommendations and rulings" in Article 21 of the DSU means full implementation, as opposed to provisional or partial implementation. The European Communities argues that, in accordance with Article 3.7 of the DSU, which stipulates that the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements, Canada has to repeal Section 55.2(2) of its *Patent Act*, which can only be achieved through another legislative act (*actus contrarius*). The abrogation of the regulations, as proposed by Canada, cannot achieve this goal.

29. The European Communities observes that, while law-making procedures differ in the various WTO Members, it is nevertheless instructive to see that the reasonable periods of time for implementation measures of a legislative nature, that

[8] European Communities' submission, para. 4.
[9] European Communities' submission, para. 4.
[10] *Ibid*., para. 14.
[11] Award of the Arbitrator under Article 21.3(c) of the DSU, *European Communities – Hormones*, WT/DS26/15, WT/DS48/13, 29 May 1998, DSR 1998:V, 1833, para. 26.
[12] European Communities' submission, para. 17.

have been granted in the past, cover periods ranging from 11 months and 2 weeks to 15 months and 1 week . The European Communities notes further that this includes cases where the reasonable period had been decided by arbitration under Article 21.3(c) of the DSU as well as cases where the parties agreed by consensus under Article 21.3(b) of the DSU.

30. The European Communities submits that, in *Canada – Certain Measures Concerning Periodicals* ("*Canada – Periodicals*"), Canada agreed to take a number of implementation measures legislatively within 15 months from the adoption of the Appellate Body Report by the DSB. The implementation measures in that dispute covered a wide variety of subject-matter, including the elimination of the entire Part V.1 of Canada's *Excise Tax Act*. Although the European Communities concedes that the agreement between the parties in that dispute is not authoritative for the case at hand, it argues that that agreement "can serve as an indicative yardstick".[13] By comparing the degree of complexity of the measures to be adopted for implementation in the *Canada – Periodicals* case with the measure to be adopted in this case, it becomes apparent that the "reasonable period of time" in the present case must be "significantly shorter than in [that] case."[14].

31. According to the European Communities, in *Canada – Periodicals*, Canada undertook to take a variety of measures, including the repeal of a customs tariff, the elimination of Part V.1 of the *Excise Tax Act*, the restructuring of the administration of the postal subsidy program and the harmonization of the commercial postal rates. In this case, the European Communities argues, all that is needed is the repeal of a single subparagraph of Section 55 of the *Patent Act* without the need for any other action. Furthermore, the fact that tax legislation tends to be subject to special procedural terms, to which general economic legislation such as patent laws are not subject, further militates, in the view of the European Communities, for a reduction of the "reasonable period of time".

32. The European Communities, therefore, requests the arbitrator to rule that 12 months from 7 April 2000, the date of the adoption of the Panel Report by the DSB, is the "reasonable period of time" for the ruling in this dispute. Thus, the European Communities proposes a "reasonable period of time" for implementation that would end on 7 April 2001.

III. DETERMINATION

33. Canada has agreed to implement the recommendations and rulings of the Dispute Settlement Body ("DSB") in *Canada – Pharmaceutical Patents*.[15] Canada has also, however, availed itself of Article 21.3 of the Dispute Settlement Understanding ("DSU"), which states in relevant part:

> If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a *reasonable period of time* in which to do so. (emphasis added)

[13]European Communities submission, para. 23.
[14]*Ibid*.
[15]DSB Meeting of 25 April 2000, WT/DSB/M/79, para. 13.

34. As the duration of the "reasonable period of time" in this case has not been agreed by either the DSB, under Article 21.3(a), or the parties to the dispute, under Article 21.3(b), the parties have requested that I determine this period of time through binding arbitration under Article 21.3(c). This provision of the DSU refers to the possibility of "binding arbitration within 90 days after the date of adoption of the recommendations and rulings".

35. In this Article 21.3 proceeding, Canada has requested a period of 11 months from the date of adoption of the Panel Report to implement the recommendations and rulings of the DSB, by means of regulations made under Canada's *Patent Act*.[16] The European Communities contests both this form of implementation and also the period of time requested for implementation by Canada. To fulfill my responsibilities as arbitrator, I will look first at the issue of the means of implementation, then at the meaning of a "reasonable period of time" for implementation, and, finally, at Canada's proposed timetable for implementation, before making my determination.

A. *MEANS OF IMPLEMENTATION*

36. The Panel found that "Section 55.2(2) of Canada's *Patent Act* is not consistent with the requirements of Article 28.1 of the TRIPS Agreement."[17] Accordingly, the Panel "recommend[ed] that the Dispute Settlement Body request that Canada bring Section 55.2(2) into conformity with Canada's obligations under the TRIPS Agreement." The DSB adopted the Panel Report on 7 April 2000.[18]

37. Canada proposes to implement the recommendations and rulings of the DSB, not by means of legislation, but by means of administrative action in the form of a regulation. The European Communities responds that, in order to implement the recommendations and rulings of the DSB properly, Canada "has to repeal Section 55.2(2) of its Patent Act, which can only be achieved through another legislative act (actus contrarius)."[19] For this reason, the European Communities states that "it is fundamental for the arbitrator to define the nature of the measure necessary to implement the recommendations and rulings of the DSB."[20] Canada, in turn, maintains that I have no such authority or mandate.

38. In considering the argument by the European Communities on the means of implementation, I note first that the Panel Report in *Canada – Pharmaceutical Patents* does not specify, or even mention, how Canada should implement the recommendations and rulings. The Panel simply recommends that the DSB request Canada to "bring Section 55.2(2) into conformity" with Canada's obligations under the *TRIPS Agreement*. The DSB has done so.

39. Thus, it has been left for Canada to decide what form the implementing action should take. As the arbitrator in *European Communities – Hormones* stated:

> An implementing Member … has a measure of discretion in choosing the *means* of implementation, as long as the means chosen are consistent with the recommendations and

[16]Oral Statement of Canada, para. 18.
[17]Panel Report, *Canada – Pharmaceutical Patents*, WT/DS114/R, adopted 7 April 2000, DSR 2000:V, 2289, para. 8.1(2).
[18]DSB Meeting of 7 April 2000, WT/DSB/M/78, para. 69.
[19]European Communities' submission, para. 19.
[20]*Ibid*., para. 17.

> rulings of the DSB and with the covered agreements.[21]

40. Moreover, I am of the view that whether the means of implementation chosen by a Member is consistent with that Member's obligations under the WTO covered agreements is not a question that falls within the jurisdiction of an arbitrator under Article 21.3(c). As the text of the provision makes clear, the sole task of an arbitrator under Article 21.3(c) is to determine a "reasonable period of time" in which a Member must complete implementation. Thus, I agree with the arbitrator in *Korea – Alcoholic Beverages* that:

> My mandate in this arbitration relates *exclusively* to determining the reasonable period of time for implementation under Article 21.3(c) of the DSU. It is not within my mandate to suggest ways and means to implement the recommendations and rulings of the DSB. Choosing the means of implementation is, and should be, the prerogative of the implementing Member, as long as the means chosen are consistent with the recommendations and rulings of the DSB and the provisions of the covered agreements. I consider it, therefore, inappropriate to determine whether, and to what extent, amendments to various regulatory instruments are required before the new tax legislation comes into effect.[22] (emphasis added)

41. As an arbitrator under Article 21.3(c), certainly my responsibility includes examining closely the relevance and duration of each of the necessary steps leading to implementation to determine when a "reasonable period of time" for implementation will end. My responsibility does not, however, include in any respect a determination of the *consistency* of the proposed implementing measure with the recommendations and rulings of the DSB. The proper concern of an arbitrator under Article 21.3(c) is with *when*, not *what*.

42. *What* a Member must do to comply with the recommendations and rulings of the DSB in any particular case is addressed elsewhere in the DSU. Article 21.5 sets out special procedures for determining "the existence or *consistency* with a covered agreement of measures taken to comply with the recommendations and rulings" resulting from a dispute.[23] If there is any question about whether *what* a Member chooses as a means of implementation is sufficient to comply with the recommendations and rulings of the DSB, as opposed to w*hen* that Member proposes to do it, then Article 21.5 applies, not Article 21.3. The reasons are many and obvious. For example, if the consistency of implementing measures could also be examined during arbitrations under Article 21.3(c), then Article 21.5 would lose much of its effect. Parties would have little to lose in requesting also from an arbitrator under Article 21.3(c) an immediate ruling on the consistency of a proposed

[21] *Supra*, footnote 11, para. 38.
[22] *Supra*, footnote 6, para. 45.
[23] Emphasis added.

measure. Also, the more elaborate Article 21.5 procedures, involving a panel of three or five members and a report adopted by the DSB, seem more suitable than the more constrained legal domain of Article 21.3(c) for assessing the consistency of substantive obligations under WTO covered agreements.

43. For these reasons, I cannot agree with the European Communities' request to examine the "nature" of the implementation proposed by Canada, in the sense of determining whether that proposed implementation is consistent with the recommendations and rulings of the DSB. That would exceed my mandate under the DSU. It is clear to me that any examination of the consistency of a proposed measure with the recommendations and rulings of the DSB must be made, not in an Article 21.3 proceeding, but in an Article 21.5 proceeding. Accordingly, I conclude that the "reasonable period of time" for implementation that must be determined in this Article 21.3 proceeding is the "reasonable period of time" for implementing what has been *proposed by Canada*, and nothing else. Thus, I offer no opinion whatsoever on whether Canada's proposed regulatory change is sufficient, or whether legislative change may be required instead for consistency with the recommendations and rulings of the DSB.

B. *THE MEANING OF A "REASONABLE PERIOD OF TIME"*

44. My task, then, is a limited one: to determine the "reasonable period of time" it should take Canada to make the regulatory change that Canada proposes to make. To accomplish this task, I begin with the text of Article 21.3, which states that:

> … 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*. (emphasis added)

45. I note that the 15-month period is a "guideline", and not an average, or usual, period. It is expressed also as a *maximum* period, subject only to any "particular circumstances" mentioned in the second sentence. Further, and significantly, a "reasonable period of time" is not available unconditionally. Article 21.3 makes it clear that a reasonable period of time is available for implementation only "[i]f it is impracticable to comply *immediately* with the recommendations and rulings" of the DSB.[24] Implicit in the wording of Article 21.3 seems to me to be the assumption that, ordinarily, Members will comply with recommendations and rulings of the DSB "immediately". The "reasonable period of time" to which Article 21.3 refers is, thus, a period of time in what is implicitly not the ordinary circumstance, but a circumstance in which "it is impracticable to comply *immediately* … ".[25]

46. Other provisions of the DSU suggest that implementation of recommendations and rulings of the DSB must be achieved, if not "immediately", then promptly. Article 21.1, for example, states that "*prompt* compliance with

[24]Emphasis added.
[25]Emphasis added.