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국제학석사학위논문

The Patterns and Determinants of Reasonable Period of
Time for Implementation in
WTO Dispute Settlement Procedure
: DSU Article 21.3(b) and 21.3(c)

WTO 분쟁해결절차에서의 합리적 이행기간
패턴 및 결정요인에 관한 연구
: DSU제21조3항(b)와 제21조3항(c) 중심으로

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The Patterns and Determinants of Reasonable Period of
Time for Implementation in
WTO Dispute Settlement Procedure
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A thesis presented

by

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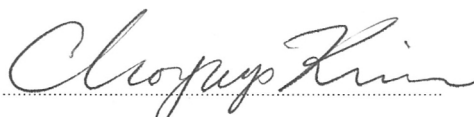
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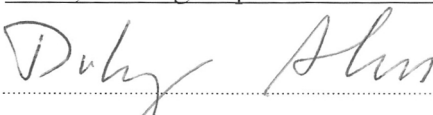
**The Patterns and Determinants of Reasonable Period of Time for
Implementation in WTO Dispute Settlement Procedure
: DSU Article 21.3(b) and 21.3(c)**

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Abstract

The Patterns and Determinants of Reasonable Period of Time for Implementation in WTO Dispute Settlement Procedure : DSU Article 21.3(b) and 21.3(c)

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The time period for compliance, granted to Respondent after completion of WTO Dispute Settlement Body's (DSB) decision, functions as a key factor to promote trade liberalization via enforcement of WTO provision. The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) Article 21.3 lays out specific procedure on how to determine the reasonable period of time (RPT) for implementation. The said provision, however, does not offer which factors or principles shall be considered to determine the duration of RPT.

Thus, the objective of this paper is to address this issue by analyzing patterns of RPT from previous WTO disputes, focusing on relationship between duration of RPT and four potential factors: 1) economic status and development level of parties in dispute, 2) protection level of product at issue, 3) means of implementation (administrative or legislative), and 4) effect from violation of specific WTO covered agreement(s) in dispute.

As the very first study to apply statistical method of correlation and regression analysis to RPT determined under both DSU Article 21.3(b) and

21.3(c), following findings were drawn. First, the study concluded that special attention to developing countries is not granted easily, especially when developing country requests for special treatment as a complainant. Secondly, it was concluded that protection level of product at issue of respondent and complainant does not affect duration of RPT under both DSU Article 21.3(b) and 21.3(c). Moreover, the means of implementation was found to have meaningful connection with length of RPT. RPT from disputes requiring legislative means of implementation for compliance resulted in longer period of time than those requiring administrative means of implementation under both Article 21.3(b) and 21.3(c). Finally, the study found that RPT from disputes covering violation of trade remedy agreements turned out to be shorter than those addressing violation of non-trade remedy agreements, not due to violation of different WTO covered agreement but due to type of means of implementation necessary for compliance.

The key findings from statistical and normative analysis of this study implies that RPT is agreed by the parties or awarded by the arbitrator via considering various factors combined as a whole, rather than imposing more weight on a single particular factor than the others. Furthermore, even though prompt compliance to DSB's recommendation and ruling shall be the prior goal for every losing party who have violated WTO provisions, the patterns of past RPT discussed in this paper would be useful guideline for Members in dispute when adoption of RPT is unavoidable.

Key words : *Reasonable Period of Time for Implementation, DSU Article 21.3(b), DSU Article 21.3(c), Particular Circumstances, Dispute Settlement Procedure, Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), WTO*

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List of Abbreviations

AB	Appellate Body
AD	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping)
ATC	Agreement on Textiles and Clothing
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade 1994
GNI	Gross National Income
MFN	Most Favored Nation
RPT	Reasonable Period of Time
SA	Agreement on Safeguards
SCM	Agreement on Subsidies and Countervailing Measures
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
TRIMs	Agreement on Trade – Related Investment Measures

I. Introduction

Ever since its enforcement in 1995, Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) has been the ultimate map and a compass for WTO Members, in search of satisfactory settlement in times of conflict against other countries. Even though WTO's dispute settlement system has been one of the most successful resolution mechanism in international legal system, there has been an increase in the number of delayed or disputed implementation cases.¹ Thus, in order to protect Members' benefit and to maintain current dispute settlement procedure's goal to establish secure and predictable, rule-based multilateral trading system,² determining *when* and *how* to implement the Dispute Settlement Body's (DSB) recommendations and rulings under this unique system is a critical matter within the overall WTO dispute settlement procedure.

The issue of *when* to implement, in particular, is addressed throughout the legal text of DSU, emphasizing immediate compliance to WTO provisions by inserting the word "prompt" in every step of the dispute settlement procedure, from composition of the panel to implementation by the respondent. Such "promptness" becomes more critical once the DSB adopts panel (and Appellate Body) reports and provides recommendation and ruling to the losing party to bring itself into conformity with WTO law. If immediate, prompt compliance to the ruling is infeasible, the implementing Member (respondent) shall have a "reasonable period of time" (RPT) to execute DSB's decision. Since respondent is often required to withdraw or

¹ Won-Mog Choi, "To Comply or Not to Comply? - Non-Implementation Problems in the WTO Dispute Settlement System," *Journal of World Trade* 41, no.05 (2007): 1048.

² *Understanding on Rules and Procedures Governing the Settlement of Disputes* [hereinafter 'DSU'], Apr. 15th 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Legal Instruments - Results of Uruguay Round, 33 I.L.M. 1125 (1994), http://www.wto.org/english/docs_e/legal_e/legal_e.htm (accessed January 03, 2015).

amend its domestic law in order to fulfill its obligation for compliance, the length of reasonable time period is critical for successful completion of any legislative, regulatory or administrative changes that are necessary. Moreover, RPT ensures that responding parties do not operate with an open ended time frame to comply with the recommendations and rulings of the DSB.³ The key question then comes down to how this reasonable period of time for implementation is determined in the WTO dispute settlement system.

Article 21.3 of the DSU specifically answers this question. According to the said provision, the time period for implementation can be : i) proposed by the member concerned and approved by the DSB (DSU Article 21.3(a)), ii) mutually agreed by the parties to the dispute (DSU Article 21.3(b)); or iii) determined by an arbitrator, not exceeding fifteen months from the date of adoption of report, depending on the particular circumstances (DSU Article 21.3(c)). Even though determining the duration of reasonable period of time is a central element to secure effective and timely compliance to the WTO law, the DSU legal text itself does not provide specific factors or principles that must be taken into account when the parties reach an agreement on RPT or an arbitrator awards binding RPT to the implementing Member. DSU Article 21.3(c) further states that RPT may be longer or shorter depending on the "particular circumstances." However, what constitutes this "particular circumstances" is also not mentioned in the DSU.

Even though scholars have written several pieces on the topic of how to determine reasonable period of time, most of the previous studies have mainly focused on RPT under DSU Article 21.3(c) by reviewing arbitrator's reasoning and rationale provided in the Award of the Arbitrator reports of DSU Article 21.3(c). From January 1995 till December 2014, respondents and complainants of 81 disputes have agreed on RPT under DSU Article

³ Shin-Yi Peng, "How Much Time is Reasonable? - The Arbitral Decisions under Article 21.3(c) of the DSU," *Berkeley Journal of International Law* 26, no.01 (2008): 324.

21.3(b) and respondents of 27 disputes were awarded with binding RPT by arbitrator under DSU Article 21.3(c). No RPT has been determined yet under DSU Article 21.3(a). Therefore, with sufficient amount of RPT available for statistical analysis, the objective of this study is to determine which factors or criteria are taken into account i) when the dispute parties reach an agreement on RPT under DSU Article 21.3(b) and ii) when the arbitrator confers RPT under DSU Article 21.3(c) by engaging in statistical analysis and case-based reasoning to investigate the patterns of RPT in WTO disputes which already has its panel (and Appellate Body) report to be adopted by the DSB.

To accomplish this goal, the study will first provide overview of WTO dispute settlement procedure, focusing on the issue of implementation. Secondly, the study will analyze patterns of RPT under two DSU provisions at issue to observe differences and similarities between the agreed RPT under DSU Article 21.3(b) and arbitrated RPT under Article 21.3(c). Furthermore, the study will engage in statistical analysis to investigate relationship between length of RPT and these four potential factors: i) economic status and development level of the parties in dispute measured in GNI/capita, ii) the protection level of the product at issue of dispute, measured in tariff rate of both respondent and complainant countries, iii) means of implementation, i.e., need for legislative or administrative process for compliance, and iv) effect from addressing violation of certain WTO covered agreement(s) in disputes, especially focusing on violation of trade remedy agreements (anti-dumping, subsidies and countervailing duties, and safeguard). Each factor would be tested against length of RPT determined via DSU Article 21.3(b) and DSU Article 21.3(c). Since official Award of the Arbitrator report is available in WTO website for DSU Article 21.3(c), the study will also engage in normative review of the past RPT reports and address change of trend in RPT, past arbitrators' interpretations, and other

factors or principles that have been raised in the previous Award of the Arbitrator reports. Lastly, the study will present concluding remarks with implications for arbitrators and Members of the WTO and provide useful recommendations for future development of WTO dispute settlement system.

Although *stare decisis* is not officially part of the dispute settlement system, not only panel and Appellate Body, but also arbitrators of DSU Article 21.3(c), heavily rely on prior decisions.⁴ Thus, the result of statistical analysis and patterns of RPT discovered from previous disputes will be useful guidance for both the Members of the WTO and the arbitrators to determine RPT.

⁴ Daniel Godinho, "The Determination of the Reasonable Period of Time under Article 21.3(c) of the DSU: An 'Arbitrary' Arbitration?," *World Trade Institute* (2007): 35.

II. Literature Review

Ever since the first RPT was agreed under DSU Article 21.3(b) between the United States and Venezuela in May 1996 from *US - Gasoline* (DS2), followed by the first RPT under DSU Article 21.3(c) from *Japan - Alcohol* (DS8,10,11) in November 1996, RPT has been conferred to numerous implementing parties. Nevertheless, the topic of reasonable period of time in WTO dispute settlement only began to receive attention from scholars around year 2000, five years after enforcement of the DSU. Since then limited number of studies have completed a detailed analysis on the topic, especially focusing on the length of RPT and what is required of the losing party while it is underway.⁵ Although most of RPT were determined under DSU Article 21.3(b), scholars have mainly focused on RPT awarded under DSU Article 21.3(c), especially aiming to determine what constitutes "particular circumstances" as stated in the provision and how this "particular circumstances" affect duration of RPT.

As one of the early studies focusing on determination of RPT, Monnier explored how DSU provisions related to RPT were interpreted in both theory and in practice by reviewing arbitration reports of RPT awards granted from 1997 to 2001. Monnier noted that arbitrator's have built up a very consistent and homogeneous case law, despite the existence of uncertainty in interpreting Article 21.3.⁶ In relation to interpreting "particular circumstances" in Article 21.3(c), Monnier found complexity of the implementing measure, implementing party's adoption of legislative or administrative procedure, economic status as a developing country, were all relevant in determining RPT.⁷ Monnier especially focused on determining the

⁵ Carolyn B. Gleason and Pamela D. Walther, "The WTO Dispute Settlement Implementation Procedures: A System in need of Reform," *Law and Policy in International Business* 31 (2000): 713.

⁶ Pierre Monnier, "The Time to Comply with an Adverse WTO Ruling : Promptness within Reason," *Journal of World Trade* 35, no.05 (2001): 840.

time period for compliance in prohibited subsidy case, which remains to be difficult and more complex. Monnier stated that in order to avoid difficulties arising from determination of RPT after the adoption of the panel (and Appellate Body) report, the panel should be granted with authority to determine the time period for compliance in every prohibited subsidies case, while arbitrator would be allowed to revisit the RPT determined by the panel when necessary and to rule on other matters related to implementation, including making non-binding but mutually satisfactory suggestion on ways and means of implementation.⁸ The author not only provided comprehensive overview of RPT, but also generated meaningful insight especially on RPT from disputes involving prohibited subsidies matter.

The next study written by Zdouc provides an introductory overview of the application and interpretation of DSU provisions in relation to RPT. By engaging in normative reviews of the past cases and interpreting DSU legal text itself, Zdouc notes that complexity of the implementation process, volume of implementation measures, and interests of developing country have been recognized as "particular circumstances" by the arbitrators, while the extent to which the losing party has taken steps towards implementation, domestic contentiousness of compliance measures, peculiar features of legislative bodies have not been considered in determining RPT.⁹

With additional RPT available over time, Godinho's dissertation provided critique of the past disputes with respect to 21 RPT awards under Article 21.3(c) of the DSU from 1997 to 2007. The author aimed to explore how arbitrators calculate RPT, what objective criteria have been

⁷ Ibid., 837-840.

⁸ Ibid., 841-842.

⁹ Werner Zdouc, "The Reasonable Period of Time for Compliance with the Rulings and Recommendations adopted by the WTO Dispute Settlement Body," in *Key Issues in WTO Dispute Settlement : The First Ten Years*, ed. Rufus Yerxa and Bruce Wilson (New York: Cambridge University Press, 2005), 90-92.

used for the calculation of RPT, and finally whether arbitration under Article 21.3(c) of the DSU is arbitrary, i.e., subjective.¹⁰ By conducting in depth case reviews on 21 RPT awards granted under Article 21.3(c), Godinho demonstrated changes in interpretation of Article 21.3(c) since its very first RPT award, moving from arbitrators adhering to the fifteen month guideline stated in the DSU Article 21.3(c), adopting a narrow interpretation of this legal provision, towards establishing RPT away from the fifteen month guideline, providing more comprehensive analysis of the "particular circumstances."¹¹ Godinho also concluded that even though arbitrators have heavily relied on prior decisions, especially regarding the interpretation of the "particular circumstances," the calculation of the RPT has remained essentially subjective and that there is no connection between these "particular circumstances" and the final RPT fixed for each award, i.e., arbitrations under Article 21.3(c) of the DSU are "arbitrary."¹²

Godinho's dissertation is a meaningful study summarizing arbitrator's key reasoning behind determining RPT and raising several key determinants of RPT. However, even though certain factors did appear repeatedly in Award of the Arbitrator reports, such as the parties' economic status as a developing country and implementing party's adoption of domestic legislative procedure for compliance, the author focused more on the fact that absence or lack of explicit reasoning explaining why particular period was chosen by arbitrator (i.e., arbitrator conferred longer RPT but did not specifically or explicitly mentioned why certain amount of extra period was granted) and failing to explain how a single or multiple factor(s) were weighted in the process of calculating RPT, the author concluded that arbitrator's determination of RPT is mainly subjective and arbitrary.

¹⁰ Godinho, "The Determination of the Reasonable Period of Time under Article 21.3(c) of the DSU: An 'Arbitrary' Arbitration?," 35.

¹¹ Ibid., 11-13.

¹² Ibid., 35.

Peng's unique study discussed the effectiveness of DSU Article 21.3(c) proceedings by exploring ten potential factors¹³ that has been raised by the complaining and/or implementing parties to determine the time allowed for implementation via case-based reasoning and theoretical review of Article 21.3 and other related provisions of the DSU.¹⁴ Expanding previous studies on RPT, Peng also conducted quantitative analysis in addition to reviewing previous WTO disputes. Among ten factors, the author concluded that adoption of legislative procedure, developing countries' need for special attention are actually considered by the arbitrators to determine longer or shorter RPT.¹⁵ Furthermore, Peng emphasized that factors such as political and social complexity shall not be potential factors in determining RPT to ensure legal certainty and predictability and special treatment shall be provided by arbitrators only when the implementing party is a developing country.¹⁶ Even though the author engaged in quantitative analysis, it remained at a basic level of simply observing the trend of RPT proposed by the complainant and respondent, in addition to 21 RPT awards from 1997 till 2006 that has been actually determined by the arbitrators under DSU Article 21.3(c). Nevertheless, Peng's study delivered comprehensive analysis on determinants of RPT, offering helpful road map for future scholars to study RPT.

Similar to Peng's study, Hansen and McRae also listed relevant and irrelevant "particular circumstances" in determining the duration of RPT. Revisiting past RPT awarded under DSU Article 21.3(c), Hansen and McRae stated that i) non-required elements in the implementation process (steps to

¹³ The 10 potential factors include constitutional schedule, legislative procedure, political sensitivity, particular political events, fiscal difficulty, developing countries, other economic matters, scientific studies, other international obligations, and punitive deadline. (*from* Peng, "How Much Time is Reasonable? - The Arbitral Decisions under Article 21.3(c) of the DSU," 333.)

¹⁴ *Ibid.*, 326.

¹⁵ *Ibid.*, 334-343.

¹⁶ *Ibid.*, 350.

be taken in implementation even though they are not legally required under domestic law), ii) the legal complexity of an implementing measure, i.e., measures requiring extensive new regulations affecting many sectors of activity in terms of drafting and coordinating, iii) involvement of a developing country Member in a dispute, and iv) prior determinations of reasonable period of time have emerged as relevant "particular circumstances."¹⁷ On the other hand, the authors indicated that i) the need for structural adjustment, ii) the political contentiousness of an implementing measure, iii) continued economic harm to complainant, and iv) detailed operations of legislatures (parliamentary majority, parliamentary calendar, etc.) are irrelevant "particular circumstances."¹⁸ Interestingly, unlike other scholars who have suggested various ways to improve how RPT should be determined under the current dispute settlement system, Hansen and McRae stated that there seems to be little dissatisfaction with the operation of DSU Article 21.3, for arbitrators have established a high degree of conformity in their RPT decisions via informally adopting a precedential approach to their work.¹⁹

Unlike Hansen and McRae, Lee and Kim criticized the way RPT is awarded under the current dispute settlement system. The authors indicated that the current system allowing leeways in terms of compliance by establishing exceptional provision such as DSU Article 21.3 is contradictory to the rest of the DSU as a whole, which mandates promptness throughout every step of the dispute settlement procedure.²⁰ Lee and Kim provided interesting recommendation to resolve such issue. Noting that permitting RPT

¹⁷ Robin Hansen and Donald McRae, "Reconciling the International and the Domestic: The Reasonable Period of Time under Article 21.3 of the DSU," in *The WTO: Governance, Dispute Settlement and Developing Countries*, ed. Merit E. Janow, Victoria Donaldson, and Alan Yanovich (New York: Juris Publishing, 2008), 995-1000.

¹⁸ *Ibid.*, 1000-1005.

¹⁹ *Ibid.*, 1006.

²⁰ Hwangyu Lee and Minjiin Kim, "A Study on WTO Dispute Settlement Process: Focusing on the Reasonable Period of Time," *Research on International Economic Law* 7, no.02 (2009): 142.

to be longer or shorter than fifteen months according to "particular circumstances" without providing clear guideline for arbitrators is problematic, Lee and Kim stated that such lenient provision should be taken out from the current dispute settlement system, i.e., reasonable period of time should be eliminated as a whole, while implementing party shall be mandated to comply with WTO provision immediately after the adoption of panel and Appellate Body report.²¹ Even though Lee and Kim were successful in addressing some of the key issues within the current dispute settlement system regarding post-dispute compliance to WTO provisions, their suggestion appears to be a radical one, since outright ignorance of implementing party's circumstances, such as domestic law making process and temporary political or economical difficulties, would be unrealistic.

One of the most recent scholarly article on RPT written by Qian in 2012 also summarized some of the key problems relevant to the RPT determination. First, Qian pointed out that RPT is used over and over again by the parties through negotiated extension, resulting in possible misuse of the RPT.²² In addition, the author stated that DSB's inability to effectively supervise the losing party's implementation during the RPT, excessive overreaching of the time frame for determining the RPT, and the fact that both the DSU provision and the WTO practice demonstrate an insufficiency in considering the interest of the developing country Members, are also problematic in relation to RPT under current dispute settlement system.²³ Regarding each of these problems, Qian made following proposals to reform current dispute settlement: i) efforts should be made to make Article 21.3(c) arbitration process more rigorous, ii) intensify the current notification requirement on implementation, iii) endow DSB with more supervision

²¹ Ibid., 144.

²² Ma Qian, "Reasonable Period of Time in the WTO Dispute Settlement System," *Journal of International Economic Law* 15, no.01 (2012) : 264.

²³ Ibid., 265.

responsibilities and powers to enhance its implementation surveillance, iv) establish an interim relief system in the DSU, which allows the non-breaching party to initiate Article 21.5 compliance objection procedure without having to wait until the expiration of the RPT, and v) provide perfect retaliatory mechanism for perfect RPT mechanism to best play its role of ensuring prompt compliance.²⁴ In summary, with most up-to-date review of the RPT determined under DSU Article 21.3, Qian's study successfully pointed out key problems with respect to RPT and provided helpful, realistic recommendations to improve current dispute settlement system.

Even though RPT received relatively little attention by the scholars, some took a step further and specifically focused on one specific potential determinant of RPT: participant's economic status as a developing country. Gambardella and Rovetta pointed out that even though the legal text of DSU calls for favorable treatment to be granted to developing countries parties to DSU Article 21.3(c) arbitrations, there is no WTO definition of a developing country, i.e., the status of developing country member is based on self-selection, and that the provision makes no distinction where developing country members are complainants rather than the implementing members in a particular dispute.²⁵ Emphasizing damage from a big WTO player trying to delay the implementation of an adverse WTO ruling might result in loss of market share or some jobs, affecting minimum living standards of some citizens of developing country, the authors suggested that future RPT arbitrators shall not tolerate developed defendant member from trying to unduly gain time to avoid implementation via RPT.²⁶ Furthermore, the authors noted that the same principle of granting favor to developing

²⁴ Ibid., 281-284.

²⁵ Maurizio Gambardella and Davide Rovetta, "Reasonable Period of Time to Comply with WTO Rulings: Need to Do More for Developing Countries?," *Global Trade and Customs Journal* 3, no.03 (2008): 105.

²⁶ Ibid., 106.

countries would apply when the defending country in the RPT arbitration is a developing country by granting a longer period to implement the WTO rulings that would otherwise be granted if it were a developed Member.²⁷ Finally, as for the developing countries, the authors advised complainant developing countries to rely on the principle of immediate compliance read in conjunction with DSU Article 21.2²⁸ and utilize the said provision (Article 21.2) as a mitigating factor to that principle if they are defendants. By revisiting past RPT determined under DSU Article 21.3(c), Gambardella and Rovetta suggested useful recommendations to both future RPT arbitrators and developing member countries. However, such advice were made by engaging in normative review of comments written by the arbitrators in Award of the Arbitrator reports, not addressing how economic status of parties of dispute actually affect calculation of RPT in practice via quantitative analysis.

Another scholar, Alvarez-Jimenez, also published a study investing the effect of parties' economic status on duration of RPT, based on reviewing arbitrator's interpretation from three disputes under DSU Article 21.3(c): *US - Gambling* (DS285), *EC - Sugar Subsidies* (DS265,266,283), and *EC - Chicken Cuts* (DS269,286). First, focusing on arbitrator's interpretations from *EC - Chicken Cuts* (DS269,286), the author stated that from developing complainant's perspective, connecting the RPT only to the time that the implementing Member takes to adopt measures to comply with the recommendations and rulings of the DSB according to its standard practice may not always be the shortest period of implementation, i.e., developed respondent countries may take advantage of such interpretation and avoid omitting some non-statutory steps of the standard practice or reducing the time they usually took.²⁹ Moreover, on arbitrator's interpretation from *US -*

²⁷ Ibid.

²⁸ Article 21.2 of the DSU states that "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." Refer to <Appendix 1> for the original text.

²⁹ Alberto, Alvarez-Jimenez, "A Reasonable Period of Time for Dispute Settlement

Gambling (DS285) and *EC - Sugar Subsidies* (DS265,266,283), Alvarez-Jimenez pointed out that even though these two cases represent an important development in protecting developing country Members interests, the RPT award itself in both cases were completely silent on how much of a role these circumstances played in the calculation of RPT.³⁰ With that note, the author provided four requirements to satisfy interpretation of DSU Article 21.3(c) to be persuasive and operative for arbitrators: i) interpretation must protect the developing country complainant's interests, ii) it cannot interfere unduly with the respondent Member's right to choose the means of implementation, iii) interpretation must preserve DSU Article 21.3(c) arbitrators' discretion in calculating the RPT, and iv) the interpretation must ensure transparency regarding how and to what extent arbitrators apply Article 21.2 when estimating the RPT by a developed country respondent.³¹ Furthermore, Alvarez-Jimenez made similar suggestions to Gambardella and Rovetta that in order to protect their interest as developing countries, developing country complainants should satisfy their burden to prove shorter RPT is necessary and use the time for implementation according to the standard practice in the respondent member as a reference and ask for some specific reduction that they regard appropriate, and possibly even demonstrate the existence of shorter means of implementation than those proposed by the developed country.³² Even though Alvarez-Jimenez's study well-summarized history of arbitrator's interpretation and provided meaningful tips for developing countries and arbitrators in considering disputants' economic status in relation to RPT, this study, similar to other previous ones, did not show how such factor is actually reflected in length of RPT.

Implementation : An Operative Interpretation for Developing Country Complainants," *World Trade Review* 6, no.03 (2007): 459.

³⁰ Ibid., 460.

³¹ Ibid., 460.

³² Ibid., 474.

Most recent scholarly paper on RPT, written by Zaman in 2013, also specifically focused on RPT awarded to developing countries. By investigating the consistency and coherence of practice from past arbitral awards in which developing countries claimed "particular attention" either as complainant or as respondent via quantitative analysis similar to that of the Peng's study (trend analysis, calculating % share of Member countries' use of RPT, etc.) and case reviews, Zaman pointed out that the lack of specific guidelines in the DSU is the substantial cause for arbitrators' non-compliance with Article 21.2 provisions in Article 21.3(c) arbitrations, which questions the procedural fairness of such arbitrations.³³ Moreover, the author also noted that incoherency in providing the expected special and differential treatment in the implementation level of a dispute could ultimately deliver substantial detrimental effects on developing countries' economies and economic development.³⁴ Zaman concluded that such situation reiterates the urgent necessity to amend the relevant DSU rules and suggested that a new mandatory provision should be included in the DSU Article 21.3(c) arbitration process, mandating arbitrators to provide sufficiently clear reasons for their decisions on the point of "particular attention" to developing countries under DSU Article 21.2.³⁵

Overall, previous literatures on RPT have focused on only those determined under DSU Article 21.3(c) via reviewing previous Award of the Arbitrator reports or applying simple quantitative analysis of comparing the duration of RPT. Therefore, this study will utilize advanced statistical methods, such as correlation and regression analysis with updated data, including the most recent WTO disputes (from January 1995 to December

³³ Kohrsed Zaman, "Determining a Reasonable Implementation Timeline for Developing Countries in WTO Disputes: An Appraisal of Special Treatment Commitments in DSU Article 21.3(c) Arbitrations," *The Law and Practice of International Courts and Tribunals* 12 (2013) : 31.

³⁴ *Ibid.*, 40.

³⁵ *Ibid.*, 31 and 47.

2014). Among various determinants discussed in previous studies, this study will observe relationship between the length of RPT and two factors that have been mentioned most frequently in both previous literatures and the Award of the Arbitrator reports: means of implementation and developing countries' need for special attention. Furthermore, the study will also raise two additional factors that have not been discussed thus far: protection level of product at issue of dispute and effect from violating specific WTO covered agreement(s), especially targeting agreements that address trade remedy matters.

III. WTO Dispute Settlement System and DSU Article 21.3

Before moving on to the 'Analysis and Result' section (Section V), it is pertinent to understand WTO dispute settlement system, especially focusing on the implementation stage. Thus, this chapter will walk through overall process of the dispute settlement and discuss the importance of reasonable period of time via conducting theoretical analysis of DSU Article 21.3(b) and DSU Article 21.3(c).

1. Overview : WTO Dispute Settlement Procedure

One of the most significant achievements of the Uruguay Round negotiations was the establishment of an effective dispute settlement system under the umbrella of the WTO Agreement.³⁶ Adopted in 1995 at the end of the Uruguay Round, the DSU established rules and procedures for dispute settlement with strong emphasis on compliance by all WTO Members, aiming i) to protect and balance rights and obligations of Members by settling disputes on the basis of rules and ii) to provide security and predictability to the multilateral trading system.³⁷

There are four major phases within the WTO dispute settlement system.³⁸ First, the parties must attempt to resolve their differences through consultations. Second, if that fails, the complaining party may demand that a panel of independent experts be established to rule on the dispute. Third, if the losing party disagrees with the final decisions of the panel, such party may bring the case to the Appellate Body. Finally, if the complaining party

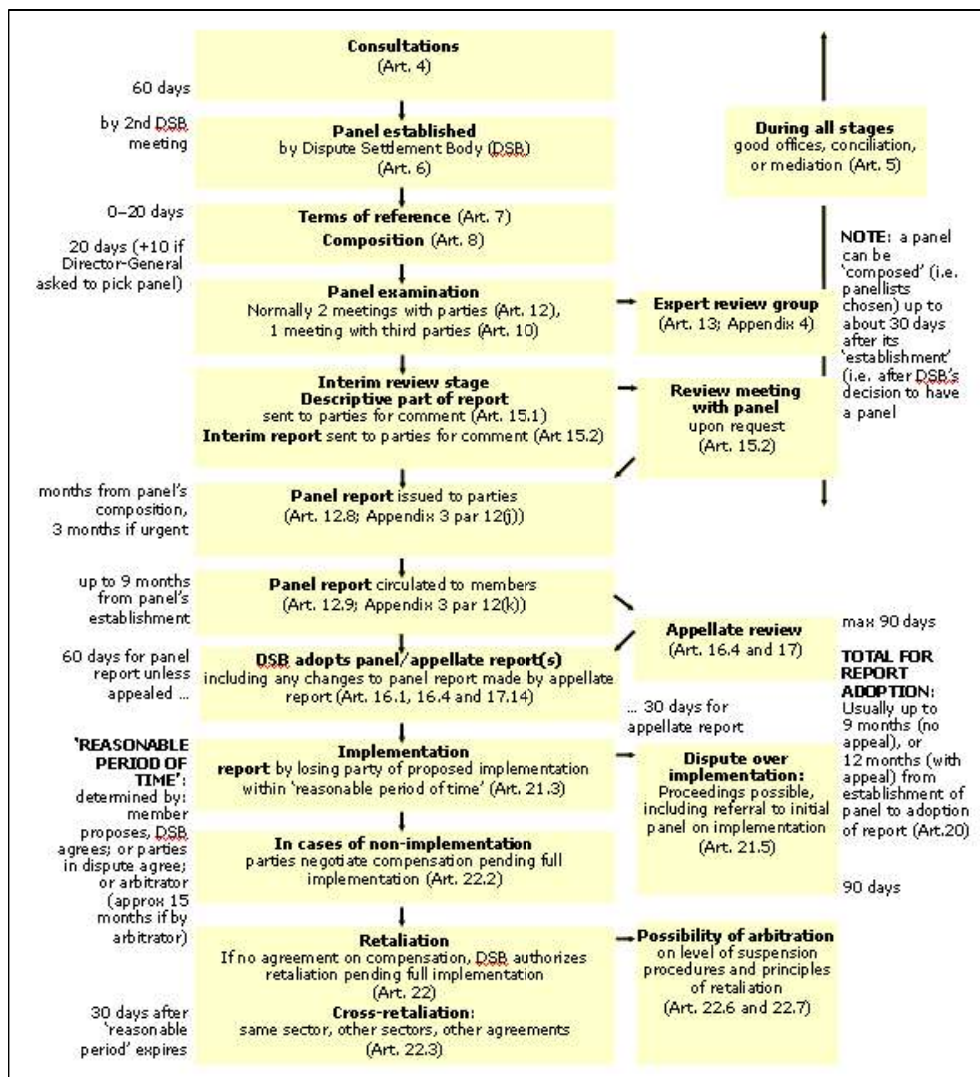
³⁶ Choi, "To Comply or Not to Comply? - Non-Implementation Problems in the WTO Dispute Settlement System," 1043.

³⁷ DSU, Article 3.1 and Article 3.2.

³⁸ John H. Jackson, William Davey, and Alan Sykes, *Legal Problems of International Economic Relations : Cases, Materials and Text*, 5th ed. (St. Paul : West Publishing, 2008), 269.

succeeds, the DSB is charged with monitoring the implementation of its recommendations. Each process will be explained in more detail.

Figure 1. WTO Dispute Settlement Procedure



Source : World Trade Organization

1.1 Consultation

The current dispute settlement procedure always begins with consultation, where parties can discuss the matter and find a satisfactory solution without resorting to litigation.³⁹ If parties fail to settle a dispute via consultation within sixty days after the date of receipt of the request for consultations, the complaining party may request the establishment of the panel.⁴⁰

1.2 Adjudication by the Panel⁴¹

After such request is submitted in writing to the Chairman of the DSB, panel is established at the DSB meeting. Since there is no permanent panel with designated panelists in the WTO, a new panel is composed for each dispute with three or five members of panelists. Once established, the panel will initiate its work, following the panel procedure according to Article 12⁴² and Appendix 3⁴³ of the DSU. Upon completion of panel procedure, a final report (Report of the Panel) is prepared including concluding remarks that the challenged measure is inconsistent with a covered agreement, recommending to the DSB that the panel request the Member concerned to bring its measure into conformity with WTO law. Completed report is translated and circulated to all WTO Members. Although the panel report contains findings and conclusions ruling on the substance of the dispute, it only becomes binding when the DSB adopts it. If there is no appeal by either party, the DSB is obliged to adopt the

³⁹ Ibid., 43.

⁴⁰ DSU, Article 4.7.

⁴¹ WTO Secretariat, *A Handbook on the WTO Dispute Settlement System : A WTO Secretariat Publication Prepared for Publication by the Legal Affairs Division and Appellate Body*, (New York: Cambridge University Press, 2005), 49-62.

⁴² DSU, Article 21. Refer to <Appendix 2> for original text.

⁴³ DSU, Appendix 3.

report. If a party has notified its decision to appeal, the panel report cannot yet be adopted, given that the Appellate Body could modify or reverse it. In that case, the panel report will be considered for adoption by the DSB only after completion of the appeal.

1.3 Adjudication by the Appellate Body⁴⁴

When appealed, a standing Appellate Body is established by the DSB, composed of seven members.⁴⁵ As a general rule, the proceedings shall not exceed sixty days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report.⁴⁶ Similar to the panel report, a separate report by the Appellate Body would be circulated and adopted by the DSB.⁴⁷

1.4 Implementation of Ruling⁴⁸

According to Article 19.1 of the DSU, following the DSB's adoption of the panel (and Appellate Body) report(s), respondent is asked to comply with the rulings and recommendations of the DSB.⁴⁹ This is the phase where DSU Article 21.3 plays a critical role.

DSU Article 21.3 chapeau states that the first obligation of the implementing Member is to inform the DSB at a meeting within 30 days after the adoption of the report(s), of its intentions to implement the recommendations and rulings of the DSB. However, if immediate compliance is not possible, the implementing Member has a reasonable period of time

⁴⁴ WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 63-73.

⁴⁵ DSU, Article 17.1.

⁴⁶ DSU, Article 17.5.

⁴⁷ DSU, Article 17.14.

⁴⁸ WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 75-78.

⁴⁹ *Ibid.*

for achieving that compliance, the grace period granted the Member concerned to bring its WTO inconsistent measures into compliance within designated time period. More detailed analysis on DSU Article 21.3 will be provided in the next section.

2. Application and Legal Technicalities of DSU Article 21.3

Table 1. Legal Text of DSU Article 21.3

<p style="text-align: center;"><i>DSU Article 21</i> <i>: Surveillance of Implementation of Recommendations and Rulings</i> <i>(emphasis added)</i></p> <p>3. At a DSB meeting held within 30 days after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have <i>a reasonable period of time</i> in which to do so. The reasonable period of time shall be:</p> <ul style="list-style-type: none">(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,(b) a period of time <i>mutually agreed by the parties</i> to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,(c) a period of time <i>determined through binding arbitration</i> 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 <i>should not exceed 15months</i> from the date of adoption of a panel or Appellate Body report. However, that <i>time may be shorter or longer, depending upon the particular circumstances.</i>
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2.1 DSU Article 21.3

According to DSU Article 21.3, the reasonable period of time is actionable when two conditions are satisfied: i) the respondent has been found to have violated WTO rules or otherwise nullified or impaired

benefits accruing to the complaining party and ii) the incriminated measure is still in existence at the time when the responding party that has lost the case has to inform the DSB of its intentions in respect of implementation.⁵⁰ Thus, it is clear that the reasonable period of time for complying with the recommendation and rulings is not available unconditionally.⁵¹ Rather, an implementing Member is entitled to RPT only when "it is impracticable to comply immediately with the recommendation and ruling of the DSB."⁵²

According to the above legal text in Table 1, DSU Article 21.3 lays out specific guidelines on how the reasonable period of time, counted as of the day of adoption of the report(s), is determined. This time period can be: (i) proposed by the Member concerned and approved by consensus by the DSB (DSU Article 21.3(a)); (ii) mutually agree by the parties to the dispute within forty-five days after adoption of the report(s) (DSU Article 21.3(b)); or (iii) determined by an arbitrator (DSU Article 21.3(c)). The first alternative, DSU Article 21.3(a), is unlikely to be adopted due to difficulty in getting approval from the DSB, since it is almost impossible for a Member concerned to get consent from all other Members beforehand when the DSB decides by 'positive' consensus, i.e., a single objection by a Member prevents approval to be obtained from the DSB.⁵³ Since no RPT has been determined under DSU Article 21.3(a), this study will focus on RPT agreed or awarded under DSU Article 21.3(b) and DSU Article 21.3(c), each respectively. With that note, each subsection of DSU Article 21.3 will be observed in more detail as written below.

⁵⁰ Zdouc, "The Reasonable Period of Time for Compliance with the Rulings and Recommendations adopted by the WTO Dispute Settlement Body," 88.

⁵¹ Award of the Arbitrator (13 June 2003), *United States - Continued Dumping and Subsidy Offset Act of 2000* [hereinafter "US - Offset Act"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS217/14, WT/DS234/22, para. 40.

⁵² DSU, Article 21.3.

⁵³ Qian, "Reasonable Period of Time in the WTO Dispute Settlement System," 259.

2.2 DSU Article 21.3(b)

Unfortunately, no official WTO documents are available providing which determinants and principles have been considered by the parties of dispute in reaching an agreement on duration of RPT. Information that are disclosed regarding RPT determined under DSU Article 21.3(b) include final duration of RPT that has been agreed by the respondent and complainant, the date of agreement, and sometimes reports on how the respondent has complied to WTO law. Such information were available in official Status Reports or Communications which have been filed by the respondent to WTO. Moreover, no previous literatures have specifically investigated reasonable period of time under DSU Article 21.3(b). Therefore, with no reliable resources available other than the legal text itself in DSU and minimal information available in WTO Analytical Index, it is unavoidable but to provide only limited analysis on interpretation and technicalities of DSU Article 21.3(b).

First of all, parties in disputes have agreed on RPT via DSU Article 21.3(b) almost three times more than receiving arbitrated RPT award through DSU Article 21.3(c). Such phenomenon is due to the fact that respondent and complainant are free from applying strict legal interpretation of DSU legal text itself, enjoying more room and discretion in negotiating duration of RPT without arbitrator's mediation.

It also has been found that sometimes the parties may enter into agreements on RPT under Article 21.3(b) following the appointment of an arbitrator to determine the reasonable period of time under Article 21.3(c).⁵⁴ In *US - Zeroing (Japan)* (DS322), the parties reached an agreement on RPT after the appointment of an arbitrator under the procedure in Article 21.3(c).

⁵⁴ World Trade Organization, *WTO Analytical Index: DSU Article 21.3(b) Parties' Agreement after Appointment of Arbitrator*, http://www.wto.org/english/res_e/booksp_e/analytic_index_e/dsu_08_e.htm#article21B3 (accessed Jan. 07, 2015), para. 1018.

Since Japan, the complainant of this case, no longer sought to have the period at issue to be determined by binding arbitration, the arbitrator decided not to issue an award in these proceedings.⁵⁵

One of the key issue to address regarding DSU Article 21.3(b) is its forty-five day time frame for agreeing on RPT and how this should be integrated into the ninety day time frame under DSU Article 21.3(c). Within the legal text of the DSU, there is no indication for the date or when to make a request for binding arbitration.⁵⁶ It has been argued that DSU Article 21.3(b) should be interpreted as affording a Member a right to impose a legal objection to a referral to arbitration beyond the contemplated forty-five days.⁵⁷ However, it would appear that complainants usually make such a request when they realize that no mutually acceptable reasonable period of time would be reached during the course of negotiation with the implementing party.⁵⁸ Even if complainants may want to request the establishment of the arbitration before the forty-five days elapse, DSU Article 21.3(b) seems to effectively limit the power of the complainants to request binding arbitration before the end of the forty-five-day time frame.⁵⁹ Consequently, DSU Article 21.3(b) in principle accords more opportunity for the implementing party to delay reaching an agreement on implementation.⁶⁰

⁵⁵ Award of the Arbitrator (11 May 2007), *United States - Measures Relating to Zeroing and Sunset Reviews* [hereinafter "US - Zeroing (Japan)"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS322/21, para. 4.

⁵⁶ Nganagjoh H. Yenkong, "The Role of Arbitrators in Determining Reasonable Period of Time and Retrospective Remedies in WTO Dispute Resolution: Beyond the Australia-Automotive Leather Panel," *Journal of World Investment & Trade: Law, Economics, Politics* 6 (2005): 615.

⁵⁷ David Palmeter and Petros C. Mavroidis, *Dispute Settlement in the World Trade Organization: Practice and Procedure*, 2nd ed. (New York: Cambridge University Press, 2004), 236-242.

⁵⁸ Yenkong, "The Role of Arbitrators in Determining Reasonable Period of Time and Retrospective Remedies in WTO Dispute Resolution," 615.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

2.3 DSU Article 21.3(c)

Analysis on interpretation and technicalities of DSU Article 21.3(c) will be addressed in more detail in the following 'Analysis and Result' section (Section V) of this study. Therefore, only those that are not mentioned in the next section are discussed below.

2.3.1 Arbitrators : Who are they?

Under DSU Article 21.3(c), the reasonable period of time is counted as the day of DSB's adoption of the panel (and Appellate Body) report(s).⁶¹ The arbitrator can be any individual or group of individuals,⁶² but so far all arbitrators under DSU Article 21.3(c) have been current or former Appellate Body members.⁶³ If the parties cannot agree on who should serve as the arbitrator within ten days after referral of the matter to arbitration, the Director General appoints arbitrator within another ten days after consulting with the parties.⁶⁴ This indicates that arbitrator's tasks are not typical under DSU Article 21.3(c), requiring a senior figure with ample amount of experience and acquaintance with the WTO dispute settlement system.⁶⁵

2.3.2 Arbitrator's Mandate

Continuing with the topic of arbitrators, it is necessary to define the scope of their mandate under DSU Article 21.3(c). Apart from stating the

⁶¹ WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 77.

⁶² DSU, Article 21.3 Footnote 13.

⁶³ Kara Leitner and Simon Lester, "WTO Dispute Settlement System 1995-2013-A Statistical Analysis," *Journal of International Economic Law* 17 (2014) : 198.

⁶⁴ DSU, Article 21.3 Footnote 12.

⁶⁵ Giorgio Sacerdoti, "The Nature of WTO Arbitrations on Retaliation," in *The Law, Economics and Politics of Retaliation in WTO Dispute Settlement*, ed. Chad P. Bown and Joost Pauwelyn (New York: Cambridge University Press, 2010), 30~31.

guideline of fifteen months and that "particular circumstances" can justify a shorter or longer period, DSU Article 21.3(c) is silent on the role or mandate of the arbitrator, allowing arbitrators themselves to articulate their mandate.⁶⁶ The phrase that "time may be longer or shorter depending upon the particular circumstances" more or less dilutes the fifteen month time period guiding the arbitral award, allowing RPT to be determined largely based on the reasoning of the arbitrator.⁶⁷ Moreover, arbitrator's mandate under DSU Article 21.3(c) is quite powerful, since awarded RPT is effectively binding and cannot be challenged before any other arbitral body.⁶⁸

The arbitrators from previous cases were all on same page regarding their mandate.⁶⁹ The past arbitrators have stated that arbitrator's mandate remains within determining the reasonable period of time for implementation under DSU Article 21.3(c), not suggesting ways and means of implementation or assessing whether the step proposed by the implementing Member brings about conformity with WTO law.⁷⁰ If there are several

⁶⁶ Hansen and McRae, "Reconciling the International and the Domestic: The Reasonable Period of Time under Article 21.3 of the DSU," 989.

⁶⁷ Yenkong, "The Role of Arbitrators in Determining Reasonable Period of Time and Retrospective Remedies in WTO Dispute Resolution," 617.

⁶⁸ *Ibid.*, 620.

⁶⁹ Arbitrators from these disputes raised one voice regarding their mandate : Award of the Arbitrator (29 May 1998), *European Communities - Measures Concerning Meat and Meat Products (Hormones)* [hereinafter "EC - Hormones"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS26/15, WT/DS48/13, paras. 33-39., Award of the Arbitrator (4 June 1999), *Korea - Taxes on Alcoholic Beverages* [hereinafter "Korea - Alcohol"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS75/16, WT/DS84/14, paras. 45-47., Award of the Arbitrator (18 August 2000), *Canada - Patent Protection of Pharmaceutical Products* [hereinafter "Canada - Pharmaceuticals"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS114/13, paras. 38-43., Award of the Arbitrator (17 March 2003), *Chile - Price Band System and Safeguard Measures Relating to Certain Agricultural Products* [hereinafter "Chile - Agricultural Products"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS207/13, paras 32 and 36-37., Award of the Arbitrator, *US - Offset Act*, paras. 47-52., Award of the Arbitrator (19 August 2005), *United States - Measures Affecting the Cross Border Supply of Gambling and Betting Services* [hereinafter "US - Gambling"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS285/13, paras. 28 and 32-33., Award of the Arbitrator (28 October 2005), *European Communities - Export Subsidies on Sugar* [hereinafter "EC - Sugar Subsidies"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS265/33, WT/DS266/33, WT/DS283/14, paras. 69-73., Award of the Arbitrator (5 May 2008), *Japan - Countervailing Duties on Dynamic Random Access Memories from Korea* [hereinafter "Japan - DRAMs"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS336/16, paras. 23-27., Award of the Arbitrator (29 August 2008), *Brazil - Measures Affecting Imports of Retreaded Tyres* [hereinafter "Brazil - Tyres"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS332/16, paras. 43-48.

possible ways to bring about conformity, the implementing Member has the discretion to choose among these options and whether the chosen option truly achieves full conformity is to be decided according to the procedure of DSU Article 21.5, not DSU Article 21.3(c).⁷¹

However, arbitrator from *Chile - Agricultural Products* (DS207) pointed out that this does not mean that the precise means or manner of implementation is not immaterial to arbitrators, as it will provide guidance in selecting the reasonable period of time and make it more likely that such period of time will balance the legitimate needs of the implementing Member against those of the complaining Member.⁷² The arbitrator from *US - Gambling* (DS285) also commented that it will be necessary to consider certain aspects of the means of implementation proposed by each of the parties, even though it is not the role of an arbitrator to identify a particular method of implementation and to determine the reasonable period of time on the basis of that method.⁷³ Moreover, regarding situation where the panel suggests means of implementation in its report, the arbitrator from *US - Offset Act* (DS217,234) stated that since the panel also recognized that there could potentially be a number of ways in which the measure at issue could be brought into conformity, the existence of panel's suggestion does not affect the well established principle that choosing the means of implementation is, and should be, the prerogative of the implementing Member.⁷⁴

Even though implementing party's discretion in choosing the ways and means of implementation has been well respected, arbitrators from latter disputes sent out a cautionary message that implementing party's discretion is not unlimited. Arbitrators from *EC - Sugar Subsidies* (DS265,266,283)⁷⁵,

⁷⁰ WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 77-78.

⁷¹ *Ibid.*, 78.

⁷² Award of the Arbitrator, *Chile - Agricultural Products* (Article 21.3(c)), paras. 36-37.

⁷³ Award of the Arbitrator, *US - Gambling* (Article 21.3(c)), paras. 28, 32-33.

⁷⁴ Award of the Arbitrator, *US - Offset Act* (Article 21.3(c)), paras. 47-52.

Japan - DRAMs (DS336)⁷⁶ and *Brazil - Tyres* (DS332)⁷⁷ stated that implementing party does not have an unfettered right to choose any method of implementation, as the chosen method must be such that it could be implemented within a reasonable period of time in accordance with the guidelines contained in DSU Article 21.3(c) and also that objectives 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.⁷⁸ Arbitrator from *EC - Chicken Cuts* (DS269,286) further added that if the implementation means fall within the respondent's legal system, arbitrator should defer to the Member's choice even if that choice takes longer to implement than other available internal means of implementation.⁷⁹ However, if the respondent attempts to deploy implementation means that fall outside its legal system, arbitrator should show a lower degree of deference and that implementing Member has the burden of demonstrating that this deployment "is necessary for, and therefore indispensable to, that Member's full and effective compliance with its obligations under the covered agreements by implementing the recommendations and rulings of the DSB."⁸⁰ It is assumed that the implementing Member will act in good faith in the selection of the method that it deems most appropriate for implementation of the recommendations and rulings of the DSB.⁸¹

⁷⁵ Award of the Arbitrator, *EC - Sugar Subsidies* (Article 21.3(c)), paras. 69-73.

⁷⁶ Award of the Arbitrator, *Japan - DRAMs* (Article 21.3(c)), paras. 23-27.

⁷⁷ Award of the Arbitrator, *Brazil - Tyres* (Article 21.3(c)), paras. 43-48.

⁷⁸ Award of the Arbitrator, *EC - Sugar Subsidies* (Article 21.3(c)), paras. 69-73.

⁷⁹ Alvarez-Jimenez, "A Reasonable Period of Time for Dispute Settlement Implementation: An Operative Interpretation for Developing Country Complainants," 455.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

2.3.3 Timeline of DSU Article 21.3 and Duration of RPT

According to the legal text of DSU Article 21.3(c) states that RPT shall be determined within ninety days after the date of adoption of the final report. However, due to DSU Article 21.3(b), which states that RPT is "period of time agreed to by the parties to the dispute within forty-five days after the date of adoption of the final report," arbitrator of DSU Article 21.3(c) will only have forty-five days to determine RPT if parties were unsuccessful in reaching an agreement on RPT, using all forty-five days granted under DSU Article 21.3(b).⁸² Even though it is pertinent for arbitrator to hear arguments from both parties and to provide logical reasoning and rationale behind determining certain duration of RPT, Article 21.3(c) of DSU does not provide realistic time period for arbitrators to do so. In practice, it was found that the forty-five or ninety days time limit for determination of RPT has been exceeded in most cases.⁸³ The amount of time spent on reaching a mutually agreed RPT ranged from 0 to 212 days, with an average duration of 81 days, 36 days more than the stipulated forty-five days under DSU Article 21.3(b).⁸⁴ The time the arbitrator takes to determine the RPT under DSU Article 21.3(c) also exceeded the ninety day limit, ranging from 103 to 256 days, with an average of 144 days, 54 days more than stipulated.⁸⁵

The legal text of DSU Article 21.3(c) also provides that the RPT to implement recommendations and rulings should not exceed fifteen months from the date of the adoption of the reports. However, such time period may be shorter or longer depending upon the "particular circumstances."⁸⁶

⁸² Peng, "How Much Time is Reasonable? - The Arbitral Decisions under Article 21.3(c) of the DSU," 327-328.

⁸³ Qian, "Reasonable Period of Time in the WTO Dispute Settlement System," 271.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ DSU, Article 21.3(c).

According to DSU Article 21.4, the reasonable period could be extended up to eighteen months in exceptional circumstances, but such implementation timeline has not been upheld in any case.⁸⁷ Even though RPT has been defined as the "shortest period possible within the legal system of the Member to implement the recommendations and rulings of the DSB" since the *EC - Hormones* (DS26,48) case, RPT should be adequate enough to grant the implementing Member the time it truly needs to go through normal domestic rule making procedures, rather than undertaking an extraordinary procedures.⁸⁸ Arbitrator from *Korea - Alcohol* (DS75,84) elaborated definition of RPT as provided by the arbitrator from *EC - Hormones* (DS26,48), stating that even though RPT shall be the shortest period possible within the legal system of the implementing Member, this does not require a Member to utilize an extraordinary legislative procedure rather than the normal legislative procedure in every case.⁸⁹ The change of trend in length of RPT over the years will be discussed in depth in the 'Analysis and Result' section (Section V).

2.3.4 Burden of Proof

The arbitrator of *EC - Hormones* (DS26,48) was the very first arbitrator to mention the issue of burden of proof in relation to RPT. The arbitrator stated that "the party seeking to prove that there are particular circumstances justifying a shorter or a longer time has the burden of proof under Article 21.3(c)."⁹⁰ Here, the arbitrator noted that the burden of proof falls on whichever party argues for period shorter or longer than the fifteen

⁸⁷ Zaman, "Determining a Reasonable Implementation Timeline for Developing Countries in WTO Disputes: An Appraisal of Special Treatment Commitments in DSU Article 21.3(c) Arbitrations," 35.

⁸⁸ WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 77.

⁸⁹ Award of the Arbitrator, *Korea - Alcohol* (Article 21.3(c)), para. 42.

⁹⁰ Award of the Arbitrator, *EC - Hormones* (Article 21.3(c)), para. 27.

month guideline, regardless of the entity's status as an implementing or complaining party. However, details on burden of proof changed in *Canada - Pharmaceuticals* (DS114). In this dispute, the arbitrator described the burden as falling on to the implementing Member to justify the duration of any proposed period of implementation.⁹¹ Specifically, the arbitrator stated that the implementing Member bears the burden of proof in showing that proposed period of implementation, including its supposed component steps, is the shortest period possible.⁹² He added, the longer the proposed period of implementation, the greater this burden would be.⁹³ This comment on burden of proof indicates that immediate compliance concept has progressively superseded the fifteen month guideline model.⁹⁴ The arbitrator from *US - 1916 Act* (DS136,162) also adopted this same reasoning from arbitrator of the *Canada - Pharmaceuticals* (DS114).⁹⁵

Interestingly, as more arbitrators began to discuss on the topic of burden of proof, diverse interpretations began to arise. In *EC - Tariff Preference* (DS246), the arbitrator returned to the very first interpretation of burden of proof provided by the arbitrator from *EC - Hormones* (DS26,48) and argued that the burden of proof is not placed on one party or the other.⁹⁶ Rather, both the respondent and complainant must provide evidence and arguments in support of the periods they propose.⁹⁷ The arbitrators from *US - Offset Act* (DS217,234) and *Brazil - Tyres* (DS332) added that even though they agree with previous arbitrators that it is for the Member seeking a reasonable period of time for implementation to establish that the

⁹¹ Award of the Arbitrator, *Canada - Pharmaceuticals* (Article 21.3(c)), para. 47.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Monnier, "The Time to Comply with an Adverse WTO Ruling : Promptness within Reason," 834.

⁹⁵ Award of the Arbitrator (28 February 2001), *United States - Anti-Dumping Act of 1916* [hereinafter "US - 1916 Act"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS136/11, WT/DS162/14, paras. 32-33.

⁹⁶ Award of the Arbitrator, *EC - Hormones* (Article 21.3(c)), para. 27.

⁹⁷ *Ibid.*

proposed period indeed constitutes the shortest period possible within its legal system to implement the recommendations and rulings of the DSB, when the implementing Member fails to do so, then the arbitrator must determine the shortest period possible for implementation, which will be shorter than proposed by the implementing Member, on the basis of the evidence presented by all parties.⁹⁸ The arbitrator from *US - Stainless Steel (Mexico)* (DS344) also agreed with arbitrators from *US - Offset Act* (DS217,234) and *Brazil - Tyres* (DS332).

2.4 Significance of the Reasonable Period of Time

With depth understanding on overall process of the WTO dispute settlement and interpretation, application of DSU Article 21.3, it is pertinent to review the significance of reasonable period of time for implementation. First of all, RPT balances the respondent's desire for an indefinite compliance period and the complainant's desire for immediate implementation.⁹⁹ Moreover, RPT prevents implementing party from having an open ended time frame to comply by imposing deadline for the implementation of ruling and recommendation of the DSB.¹⁰⁰ Furthermore, RPT enables prompt compliance and hence prompt settlement of disputes, which is the goal of the WTO dispute settlement system.¹⁰¹ Failure by the Members to implement the DSB's decisions within the RPT not only perpetuates the adverse trade effects caused by the inconsistent measure, but also undermines the dispute settlement mechanism.¹⁰² Thus, various problems

⁹⁸ Award of the Arbitrator, *Brazil - Tyres* (Article 21.3(c)), para. 51. Award of the Arbitrator, *US - Offset Act* (Article 21.3(c)), paras. 44 and 55.

⁹⁹ Peng, "How Much Time is Reasonable? - The Arbitral Decisions under Article 21.3(c) of the DSU," 325.

¹⁰⁰ Godinho, "The Determination of the Reasonable Period of Time under Article 21.3(c) of the DSU : An 'Arbitrary' Arbitration?," 9.

¹⁰¹ Qian, "Reasonable Period of Time in the WTO Dispute Settlement System," 258.

¹⁰² *Ibid.*

with respect to the determination of the RPT can affect the proper functioning of the WTO dispute settlement system.¹⁰³ In addition, since parties of dispute may proceed further to additional arbitration under DSU Article 21.5 (disagreement between the parties regarding implementation of the DSB rulings) and DSU Article 22.6 for retaliation by the complainant till expiration of RPT, determining a reasonable timeline for implementation under DSU Article 21.3(c) plays a pivotal role in adjudicating substantial legal issues in DSU Article 21.5 and DSU Article 22.6 arbitrations.¹⁰⁴ Due to such significance, it is pertinent to look into DSU Article 21.3 in more details.

¹⁰³ Ibid.

¹⁰⁴ Zaman, "Determining a Reasonable Implementation Timeline for Developing Countries in WTO Disputes: An Appraisal of Special Treatment Commitments in DSU Article 21.3(c) Arbitrations," 34.

IV. Method and Factors at Issue

In order to determine which factors or principles are taken into account when dispute parties reach an agreement on RPT under DSU Article 21.3(b) or receives binding RPT by the arbitrator via DSU Article 21.3(c), the duration and patterns of RPT from previous WTO disputes will be analyzed in depth. Since RPT begins immediately after the date of adoption, this study investigated 81 disputes under DSU Article 21.3(b) and 27 disputes under DSU Article 21.3(c), which has its panel (and Appellate Body) report to be adopted by the DSB between January 1995 and December 2014. Since RPT is originally composed of number of months and weeks or days, each RPT was converted into a single unit of months, assuming a single month equals to 30 days. Since no official report or document is published explaining the reasoning and rationale behind how respondent and complainant countries have reached agreement on RPT under DSU Article 21.3(b), most of the factors to be tested against duration of RPT were selected based on reviewing Award of the Arbitrator report of DSU Article 21.3(c). Such design would allow this research to investigate patterns and determinants of RPT and to observe similarities and differences between RPT determined under DSU Article 21.3(b) and Article 21.3(c). Detailed methodology and assumption for each factor is discussed below.

1. Factor 1 : Economic Status and Development Level

Thus far, developing Members in dispute have requested for special attention in determining RPT. According to previous literatures, a disputant's economic status as a developing country has been said to be recognized as a factor constituting "particular circumstances" by number of arbitrators. Moreover, apart from the issue of RPT, the DSU legal text itself offers

special and differential treatment or attention to developing countries across various stages of dispute settlement procedure. However, according to Busch and Reinhardt, the WTO dispute settlement does not make developing country complainants significantly more likely to get defendants to liberalize disputed policies, while wealthy complainants are significantly more likely to secure their desired outcomes under the current system.¹⁰⁵ On the other hand, Antell and Coleman's study showed opposite result from Busch and Reinhardt, arguing that developing countries actually do not face a disadvantage in the litigation and compliance stages of WTO dispute settlement but appears to have a small advantage in these stages.¹⁰⁶ Moreover, the authors also found that developing countries who use DSU Article 21.3 process of reasonable period of time faced no unusual delays in litigation when they are in dispute against a richer respondent.¹⁰⁷

With continuation of such debate on developing countries' experience in WTO dispute settlement, it is worth investigating the relationship between length of RPT and economic status and development level of respondent and complainant, i.e., developed or developing country. In order to observe such relationship, the study applied various statistical methods, including F-test, correlational and regression analysis. For regression analysis, hypotheses were developed as written below.

- H_0 : Country's economic status and development level, measured in GNI/capita, does *not* have a significant relationship with length of RPT.
- H_1 : Country's economic status and development level, measured in GNI/capita, does have a significant relationship with length of RPT.

¹⁰⁵ Marc L. Busch and Eric Reinhardt, "Developing Countries and General Agreement on Tariff and Trade/World Trade Organization Dispute Settlement," *Journal of World Trade* 37, no.04 (2003) : 729-730.

¹⁰⁶ Geoffrey Antell and James W. Coleman, "An Empirical Analysis of Wealth Disparities in WTO Disputes: Do Poorer Countries Suffer from Strategic Delay during Dispute Litigation?," *Boston University International Law Journal* 29 (2011): 281.

¹⁰⁷ *Ibid.*, 283.

The historical GNI/capita (Gross National Income/capita) in current US\$ for each country was collected from the World Bank database. Since it often takes years to go through dispute settlement procedure, GNI/capita was measured by averaging GNI/capita from a year before, year of, and a year after the date of the adoption, i.e., average of three consecutive years of GNI/capita. Moreover, In order to provide clear distinction between developed and developing countries, only those classified as "High Income" country according to the World Bank Analytical Classifications were categorized as "Developed" countries. Those with "Upper-Middle," "Lower-Middle," or "Low" income were categorized as "Developing" countries. Since this study aimed to find relationship between the duration of RPT and economic status and development level of respondent and complainant, those cases with multiple complainants were broken down into independent cases with a single respondent against a single complainant, generating 103 disputes in total under DSU Article 21.3(b) and 54 disputes under DSU Article 21.3(c).

2. Factor 2 : Protection Level of Product at Issue

The study also aimed to observe relationship between the respondent and complainant country's protection level of product at issue. Even though this factor has never been raised in previous literatures or Award of the Arbitrator reports, it is worth investigating since product at issue of a dispute usually tends to be socially and economically sensitive product in both respondent and complainant countries, which often tend to affect special interest groups or industry and domestic rule making process. Thus, for this specific factor, it was assumed respondent with high protection level of product at issue (i.e., higher tariff rate) would desire longer RPT to gain sufficient time to resolve various social and political issues that may arise

from modifying specific industry of product at issue and to maintain WTO inconsistent but economically beneficial measure at home as long as possible. Moreover, it was also assumed that complainant with higher protection level of product at issue would desire shorter RPT, since swift compliance by the implementing party would be necessary to protect their economic interest. With these assumptions, the study will first apply correlational analysis. The study will also examine the significance of protection level of product at issue in determining RPT by running a regression. Hypotheses for regression analysis is written below.

- H_0 : Higher the tariff rate, i.e., higher the protection level of product at issue, shorter the RPT.
- H_1 : Higher the tariff rate, i.e., higher the protection level of product at issue, longer the RPT.

In order to measure level of protection, first, all products at issue received 4-digit or 6-digit Harmonized System code based on the panel (and Appellate Body) report of the dispute or official government documents such as the United States Federal Register or European Communities Council Regulation, which specifically addresses promulgation of measure at issue of a dispute. Moreover, tariff rate was measured by computing average tariff rate of respondent and complainant from a year before, year of, and a year after the date of the adoption. All tariff rates are MFN (Most Favored Nation) applied tariffs, which are normal non-discriminatory tariffs charged on imports, excluding preferential tariffs under free trade agreements and other schemes or tariffs charged inside quotas.¹⁰⁸ Tariff rates were collected from WTO Tariff Download Facility. The tariff rates were measured as ad valorem tariff (percentage). Two previous disputes under DSU Article

¹⁰⁸ World Trade Organization, *Tariff Download Facility*, <http://tariffdata.wto.org> (accessed January 07, 2015).

21.3(c), *Japan-Alcohol* (DS8,10,11) and *Chile-Alcohol* (DS87,110), however, used non-ad valorem tariff of national currency per liter. Since non-ad valorem tariff cannot be converted into ad-valorem tariff, these two cases were excluded from the analysis. Since tariff rate differs in each country, those disputes with multiple complainants were each broken down into independent dispute with a single respondent against a single complainant, resulting in total of 106 disputes under DSU Article 21.3(b) and 54 disputes under Article 21.3(c). Those disputes covering certain methodology, regulation or measures,¹⁰⁹ intellectual property or trademarks matters¹¹⁰ or services¹¹¹ were all excluded from the analysis due to absence of product at issue.

3. Factor 3 : Means of Implementation

The third factor, means of implementation, has been raised as a key factor in determining RPT throughout previous literatures and Award of the Arbitrator reports of DSU Article 21.3(c). It was assumed that if legislative means of implementation is necessary, which requires government to go through multiple levels of law making entities, then the duration of RPT would be longer. On the other hand, for disputes in need of adopting administrative means of implementation, the length of RPT would be shorter. In order to test this factor, each previous dispute under DSU Article 21.3(b) and Article 21.3(c) was assigned with a means of implementation, i.e., legislative or administrative, via revisiting Award of the Arbitrator reports or Communication reports that has been officially filed by the respondent to the WTO.

¹⁰⁹ *US - Zeroing of Dumping Margins (EC)* (DS294), *US - Zeroing (Japan)* (DS322), *US - Continued Zeroing* (DS350), *US - Countervailing and Anti-Dumping Measures (China)* (DS449)

¹¹⁰ *US - Section 211 "Havana Club"* (DS176), *China - IP Rights* (DS362)

¹¹¹ *Mexico - Telecoms* (DS204), *China - Electronic Payment Services* (DS413)

Under DSU Article 21.3(b) there were two disputes where both administrative and legislative means of implementations were applied for compliance (*Mexico - Anti-Dumping Measures on Rice* (DS295) and *US - Anti-Dumping and Countervailing Duties (China)* (DS379)) and three additional disputes where two sets of RPT have been agreed between the parties of dispute (*Mexico - Taxes on Soft Drinks* (DS308), *Thailand - Cigarettes* (DS371), *US - Zeroing (Korea)* (DS402)). Since this study aimed to find relationship between means of implementation and duration of RPT, each of these case was broken down into separate independent cases with a single mean of implementation with one set of RPT, resulting in 86 disputes under DSU Article 21.3(b) and 27 disputes under DSU Article 21.3(c). In order to observe significance of relationship between the variables at issue, the study applied F-test and regression analysis using dummy variables.¹¹²

4. Factor 4 : Violation of Certain WTO Covered Agreements

Along with Factor 2 of this study, Factor 4 is also a new factor that has not been raised in previous literatures or in DSU Article 21.3(c) Award of the Arbitrator reports. This factor was selected in order to examine whether there are any differences in length of RPT according to different WTO agreement that has been found to be in violation by the DSB. Since most of the disputes involve violation of more than one WTO covered agreements, those cases with multiple violations were broken down into independent disputes with a single set of RPT and violation of one WTO agreement, resulting in 113 disputes in total under DSU Article 21.3(b) and 41 disputes under DSU Article 21.3(c).

More specifically, this study investigated whether duration of RPT is shorter from disputes with violation of trade remedy agreement (Agreement

¹¹² For regression analysis, the study used 0 to indicate disputes in need of administrative means of implementation and '1' for those in need of legislative means of implementation.

on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping) (AD), Agreement on Safeguards (Safeguards), Agreement on Subsidies and Countervailing Measures (SCM)), since adoption of administrative procedure is usually sufficient to bring trade remedy disputes into compliance with WTO law, such as simply lifting anti-dumping measures or countervailing duties.

V. Analysis and Result

1. Overview : Patterns of Reasonable Period of Time

Table 2. Patterns of RPT - DSU Article 21.3(b) vs. Article 21.3(c)¹¹⁸

Question at Issue	Article 21.3(b)	Article 21.3(c)
Total Number of Disputes (01.1995~12.2014)	81 disputes	27 disputes
Average Length of RPT	9.66 months	11.38 months
Longest RPT	24 months ¹¹³	15 months, 1 week ¹¹⁴
Shortest RPT	2.23 months ¹¹⁵	6 months ¹¹⁶
Most heavy user - Respondent ¹¹⁷	United States	United States
Most heavy user - Complainant	United States	EC/EU
Total Number of Disputes with Legislative Means of Implementation	25 disputes (29.07%)	16 disputes (59.26%)
Total Number of Disputes with Administrative Means of Implementation	61 disputes (70.93%)	11 disputes (40.74%)
Average Length of RPT for Disputes with Legislative Means of Implementation	11.01 months	12.62 months
Average Length of RPT for Disputes with Administrative Means of Implementation	9.12 months	9.56 months
Total Number of Trade Remedy Disputes	50 disputes (44.25%)	12 disputes (29.27%)
Safeguards	6 disputes	1 disputes
Subsidies and Countervailing Measures	12 disputes	5 disputes
Anti-Dumping	32 disputes	6 disputes
Total Number of Non-Trade Remedy Disputes	63 disputes (55.75%)	29 disputes (70.73%)
Average RPT of Trade Remedy Cases	8.33 months	10.82 months
Safeguards	5.21 months	14.00 months
Subsidies and Countervailing Measures	9.85 months	9.59 months
Anti-Dumping	8.31 months	11.31 months
Average RPT of Non-Trade Remedy Disputes	10.84 months	11.53 months

¹¹³ *Dominican Republic - Cigarettes* (DS302)

¹¹⁴ *EC - Bananas* (DS27)

¹¹⁵ *Dominican Republic - Bag and Fabric Safeguards* (DS415, 416, 417, 418)

¹¹⁶ *Canada - Pharmaceuticals* (DS114)

¹¹⁷ Refer to <Appendix 4> for DSU Article 21.3(b) and <Appendix 6> for Article 21.3(c).

¹¹⁸ Refer to <Appendix 3> or DSU Article 21.3(b) and <Appendix 5> for Article 21.3(c).

Table 2 summarizes overall patterns of RPT that has been determined under DSU Article 21.3(b) and Article 21.3(c). Most disputes determined RPT by reaching agreement between the parties according to DSU Article 21.3(b). Interestingly, even though RPT under DSU Article 21.3(c) was assumed to be shorter than that under Article 21.3(b) due to arbitrator's mediation, who would emphasize promptness in determining RPT by applying common law interpretation of DSU, the RPT under Article 21.3(c) turned out to be longer than that of the Article 21.3(b). Most heavy user of RPT under both provisions at issue were developed countries, particularly the United States and the European Communities. This may be due to the fact that developed countries tend to be more active in WTO dispute settlement system with well established financial and human resources available to engage in litigation within international organization.

Interestingly, it was also found that most RPT from disputes requiring legislative means of implementation for compliance were determined under DSU Article 21.3(b), while those requiring administrative means of implementation were determined under DSU Article 21.3(c). Possible explanation on such phenomenon would be provided in more detail in Section 4 of the 'Analysis and Result' part of this study.

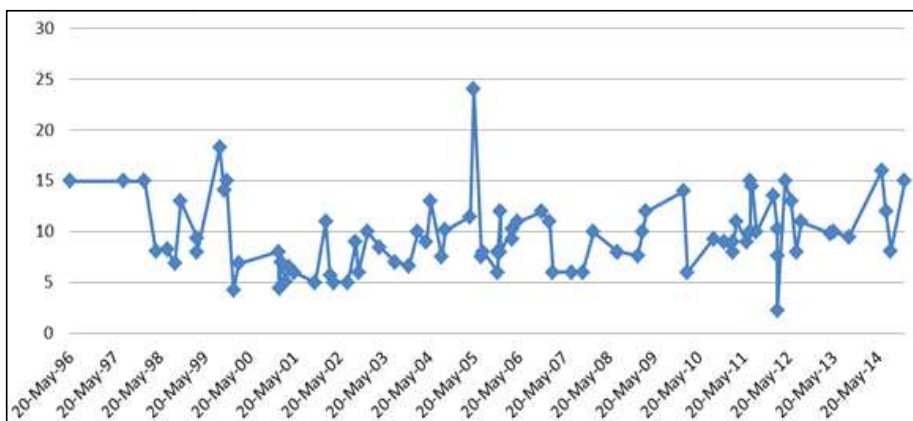
Moreover, supporting assumptions for Factor 3 of this study as stated in the above 'Method and Factors at Issue' section, the average length of RPT for disputes in need of legislative means of implementation were entitled to longer RPT than those requiring administrative means of implementation under both DSU Article 21.3(b) and Article 21.3(c). Interestingly, RPT for both administrative and legislative means of implementation under DSU Article 21.3(c) turned out to be longer than those agreed under DSU Article 21.3(b). This indicates that presence of arbitrator and application of their common law interpretation of DSU, which emphasizes promptness in every step of the dispute settlement system, does

not necessary result in shorter RPT.

Last but not least, in relation to RPT with effect from violation of certain WTO covered agreements, it was found that RPT determined for disputes covering violation of trade remedy agreements were shorter than RPT from disputes covering violation of non-trade remedy agreements. This also supports the assumption that RPT from trade remedy disputes would be shorter than those from non-trade remedy disputes. Each question at issue addressed in this section will be discussed further in the following sections.

With that note, the study observed trend of RPT under both DSU Article 21.3(b) and Article 21.3(c) over the past twenty years. Ever since the first RPT was agreed between the United States and Venezuela in May 1996, no significant trend has been observed over time. Interestingly, it was shown that RPT agreed in early disputes under DSU Article 21.3(b) were fifteen months long. Since no specific guidelines are available in DSU regarding how and what to consider to reach agreement on RPT, it appears parties who have reached agreement on RPT under Article 21.3(b) from early disputes referred to fifteen months guideline stated in Article 21.3(c).

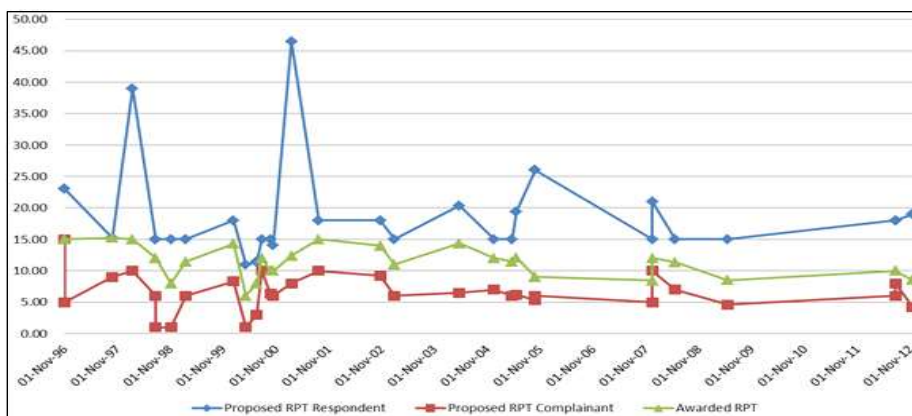
Figure 2. Agreed RPT under DSU Article 21.3(b)



In order to observe how RPT under DSU Article 21.3(c) is determined, it is pertinent to review RPT that has been proposed by both respondent and complainant parties. The average RPT proposed by the complainant was 6.99 months. The average RPT proposed by the respondent was 18.79 months, exceeding the fifteen months guideline stated in DSU Article 21.3(c)(iii). This confirms that complainant want swift compliance by the respondent, while respondent want to secure maximum time period feasible for compliance.

To observe in more detail, the shortest RPT proposed by the respondent was 11 months, requested by Canada in *Canada - Pharmaceuticals* (DS114). Canada's proposed RPT, however, was still 10 months longer than that proposed by the European Communities, the complainant of dispute. The longest RPT proposed by the respondent was 46 months and 15 days, requested by Argentina in *Argentina - Bovine Hides* (DS155). The shortest RPT proposed by the complainant was 1 month, requested by Indonesia from *Indonesia - Autos* (DS54,55,59,64), Australia from *Australia - Salmon* (DS18), and Canada from *Canada - Pharmaceuticals* (DS114). The longest RPT proposed by the complainant was 15 months, requested by the European Communities from *Japan - Alcohol* (DS8,10,11).

Figure 3. Proposed and Awarded RPT under DSU Article 21.3(c)



It was shown in Figure 3 that the length of awarded RPT under DSU Article 21.3(c) has decreased over the past twenty years. Interestingly, the awarded RPT moved closely together with RPT proposed by the complainant. Overall, 23 disputes received RPT shorter than fifteen months while only 4 disputes received RPT longer than fifteen months.¹¹⁹

To elaborate further on decreasing trend of RPT under DSU Article 21.3(c), arbitrators from *Japan - Alcohol* (DS8,10,11) and *EC - Bananas* (DS27) stated in the Award of the Arbitrator reports that he was not convinced that the "particular circumstances" advanced by the complaining parties justify a departure from the fifteen month guideline.¹²⁰ Since it was the very first time for arbitrator to award RPT, he did not provide detailed reasoning and rationale behind why RPT shall not depart from fifteen months stated in DSU Article 21.3(c)(iii). However, it is clear that arbitrators in early cases adhered to fifteen months as guideline period for RPT.

However, as shown in Figure 3, RPT began to decrease after a ground breaking case, *EC - Hormones* (DS26,48), in 1998. The arbitrator stated that the legal text of DSU Article 21.3(c) provides a guideline, not a rule for the arbitrators that the reasonable period of time to implement recommendations and rulings of the DSB should not exceed fifteen months from the date of adoption of a panel or Appellate Body report.¹²¹ However, he added that the time may be shorter or longer, depending upon particular circumstances.¹²² With that note, the arbitrator understood the fifteen month guideline to be an "outer limit or a maximum in the usual case," while

¹¹⁹ Refer to <Appendix 5> for more details.

¹²⁰ Award of the Arbitrator (14 February 1997), *Japan - Taxes on Alcoholic Beverages* [hereinafter "Japan-Alcohol"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS8/15, WT/DS10/15, WT/DS11/13, para. 27. Award of the Arbitrator (7 January 1998), *European Communities - Regime for the Importation* [hereinafter "EC-Bananas"], Sale and Distribution of Bananas, Recourse to Arbitration under DSU Article 21.3(c), WT/DS27/15, paras. 18-20.

¹²¹ Award of the Arbitrator, *EC - Hormones* (Article 21.3(c)), paras. 24-25.

¹²² *Ibid.*, para. 25.

recognizing that the time period may be shorter or longer, "depending upon the particular circumstances."¹²³ The arbitrator also added that Article 21.3(c) should be interpreted in its context, pointing in particular to the "prompt" compliances and settlement of disputes requirements of DSU Article 21.1 and Article 3.3.¹²⁴ Based on the dictionary definition of "prompt," the arbitrator stated "it is clear that the reasonable period of time, as determined 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" (emphasis added) and that "this should not be greater than fifteen months in the usual case, but could also be less."¹²⁵ Providing such clear interpretation of DSU Article 21.3(c), *EC -Hormones* (DS26,48) was not only the first arbitration to set clear legal principle in determining RPT, but also the first dispute where arbitrator explicitly stated that RPT should be the shortest period possible. Since this historical dispute, arbitrators have invoked the shortest possible time principle as a basis for determining whether factors constitute "particular circumstances."¹²⁶

Restating arguments stated in the Award of the Arbitrator report of *EC -Hormones* (DS26,48), the arbitrator of *Canada -Pharmaceuticals* (DS114) noted that fifteen months is established as a maximum guideline.¹²⁷ Moreover, he added that DSU Article 21.3(c) is not available unconditionally, for respondent shall receive reasonable period of time for implementation only in case where immediate compliance to DSB rulings is impracticable to do so and that as suggested by other provisions of the DSU, namely Article 3.3, 21.1, and 21.4, the implementation should be made "promptly" if not immediately.¹²⁸

¹²³ Ibid.

¹²⁴ Ibid., para. 26. For text of DSU Article 21.1 and Article 3.3, refer to <Appendix 1>.

¹²⁵ Ibid., para. 26.

¹²⁶ Hansen and McRae, "Reconciling the International and the Domestic: The Reasonable Period of Time under Article 21.3 of the DSU," 989.

¹²⁷ Award of the Arbitrator, *Canada -Pharmaceuticals* (Article 21.3(c)), para. 45.

¹²⁸ Ibid., paras. 45-47.

Since these early arbitrations, the standard of "the shortest period possible within the legal system of the Member" has been a clear principle applied to later arbitrations in determining RPT. However, the arbitrator of *US - Gambling* (DS285) sent out a cautionary warning on overusing this standard. The arbitrator stated that "the shortest period possible for implementation within the legal system of the implementing Member is a convenient phrase that has been used by previous arbitrators and that this standard can and must also take due account of the two principles expressly mentioned in Article 21 of the DSU, namely reasonableness and the need for prompt compliance."¹²⁹ He concluded that each arbitrator must take account of "particular circumstances" relevant to the case at hand and that strict insistence on this standard would tie an arbitrator's hands and prevent him or her from properly identifying and weighing the particular circumstances that are determinative of "reasonableness" in each individual case.¹³⁰

Overall, it is unclear how much of importance arbitrator has imposed in each dispute on this standard when determining RPT. However, as shown in Figure 3, RPT has continued to show decreasing trend even after the *US - Gambling* (DS285) in 2005, indicating that the standard of RPT to be the shortest period possible for implementation within the Member's legal system continues to play a critical and significant role in determining RPT by the arbitrators. Moreover, past interpretation by the arbitrators suggests that the shortest period principle can be approached in two ways: see it as an overarching principle or to see it as a factor that is to be taken into account, alongside the requirement to determine whether claimed particular circumstances justify a longer or shorter period of time for implementation.¹³¹

¹²⁹ Award of the Arbitrator, *US - Gambling* (Article 21.3(c)), para. 44.

¹³⁰ *Ibid.*

¹³¹ Hansen and McRae, "Reconciling the International and the Domestic: The Reasonable Period of Time under Article 21.3 of the DSU," 991.

2. Factor 1 - Economic Status and Development Level

The first statistical analysis focused on the relationship between duration of RPT and economic status and development level of respondent and complainant. In every case where a developing country participated in a dispute as a respondent or as a complainant, special treatment¹³² to protect its interest as a developing country has been raised as a key argument to support their position in relation to duration of RPT. A developing country will ask for longer RPT when it is a respondent and will ask for shorter RPT when it is a complainant. However, absence of specific standard and detailed guidelines in determining the implementation timeline in DSU Article 21.3(c) places developing countries and least developed countries, in particular, in a more degrading and marginalized position within the WTO dispute settlement system.¹³³ In order to observe how developing countries' request for special attention is carried out in practice, this study has divided each respondent and complainant country into a developed or developing country according to the size of its GNI/capita (current US\$). Then first compared four distinctive groups separately: respondent who is a developed country, respondent who is a developing country, complainant who is a developed country, and complainant who is a developing country. The result of the first analysis is written as below.

¹³² "Special attention" or "special treatment" is a technical term used throughout the WTO Agreement to designate those provisions that are applicable only to developing country Members. (from WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 11 (Footnote 15)).

¹³³ "Determining a Reasonable Implementation Timeline for Developing Countries in WTO Disputes: An Appraisal of Special Treatment Commitments in DSU Article 21.3(c) Arbitrations," 37.

2.1 Group Analysis - Developed vs. Developing Countries

Table 3. Economic Status and Development Level - Group Analysis

		Question at Issue	Article 21.3(b)	Article 21.3(c)
Respondent	Developed	Total Number of Disputes	52 disputes (64.20%)	19 disputes (70.37%)
		Total Number of Countries	6 countries	5 countries
		Average GNI/Capita	US\$38,466/capita	US\$32,971/capita
		Average RPT	9.79 months	11.26 months
	Developing	Total Number of Disputes	29 disputes (35.80%)	8 disputes (29.63%)
		Total Number of Countries	9 countries	7 countries
		Average GNI/Capita	US\$4,932/capita	US\$5,463/capita
		Average RPT	9.30 months	11.65 months
Complainant	Developed	Total Number of Disputes	63 disputes (61.17%)	32 disputes (60.38%)
		Total Number of Countries	9 countries	6 countries
		Average GNI/Capita	US\$36,103/capita	US\$27,415/capita
		Average RPT	9.63 months	11.32 months
	Developing	Total Number of Disputes	40 disputes (38.83%)	21 disputes (39.62%)
		Total Number of Countries	21 countries	12 countries
		Average GNI/Capita	US\$4,014/capita	US\$4,218/capita
		Average RPT	9.48 months	11.73 months

2.1.1 DSU Article 21.3(b)

The most frequent users of DSU Article 21.3(b) as respondent were developed countries, the United States (31 disputes) and the European Communities (12 disputes). The most frequent users as complainant were also developed countries, the United States (26 disputes) and the European Communities (15 disputes).

Interestingly, although China joined WTO much later than other Members, it was found as the third most frequent user of DSU Article 21.3(b), both as a respondent (8 disputes) and as a complainant (6 disputes).

Such observation demonstrates China's active participation in WTO. The countries who were granted with longer RPT via agreement as a respondent under DSU Article 21.3(b) were mainly developing countries (Philippines and Turkey).¹³⁴ The same observation also applied to countries who have agreed on RPT with its counterpart as a complainant (Venezuela, Honduras, Malaysia).¹³⁵ However, according to analysis above, where RPT was measured in two distinctive groups of developed and developing countries, it was shown that despite small difference, developed countries as a group, who agreed on RPT via DSU Article 21.3(b) received longer RPT both as a respondent and as a complainant than in the case for DSU Article 21.3(c).

2.1.2 DSU Article 21.3(c)

The most frequent users of DSU Article 21.3(c) as respondent were all developed countries, i.e., the United States (8 disputes), the European Communities (5 disputes), and Canada (3 disputes). The most frequent users of DSU Article 21.3(c) as complainant were also developed countries, the European Communities (11 disputes), the United States (7 disputes), Canada and Japan (5 disputes each). Unlike its behavior under DSU Article 21.3(b), China only determined its RPT as a respondent in one dispute (*China – GOES* (DS414)) under DSU Article 21.3(c), which its panel and Appellate Body report was adopted in year 2012. The countries who were granted with longer RPT via arbitration as a respondent were mainly developing countries (Chile, Argentina, Brazil, Indonesia).¹³⁶ Such observation also

¹³⁴ Philippines received longest RPT as a respondent (13.53 months), followed by Canada (12.24 months), Turkey (10.5 months), EC (10.22 months), and India (10.03 months). Refer to <Appendix 4> for more details.

¹³⁵ Venezuela received longest RPT as a complainant (15 months), followed by Honduras (13.12 months), Malaysia (13 months), Pakistan (13 months), and Argentina (12 months). Refer to <Appendix 4> for more details.

¹³⁶ Chile received longest RPT as a respondent (14.15 months), followed by EC (13.14 months), Argentina (12.4 months), Brazil and Indonesia (each 12 months respectively). Refer to <Appendix 6> for more details.

applied to countries who agreed on RPT with its counterpart as a complainant (Ecuador, Guatemala, Honduras, Argentina, India).¹³⁷ According to above group analysis, it was found that developing countries actually receive longer RPT both as a respondent and as a complainant, while developed countries received shorter RPT both as a respondent and as a complainant.

2.1.3 DSU Article 21.3(b) vs. DSU Article 21.3(c)

It was found that developed countries were the most frequent users of both DSU Article 21.3(b) and Article 21.3(c) as respondent and as complainant. Based on the analysis above, developing countries tend to enjoy better benefits with longer RPT as respondent under DSU Article 21.3(c) than under DSU Article 21.3(b). On the other hand, developing countries would enjoy better benefits with shorter RPT as complainant under DSU Article 21.3(b) than under DSU Article 21.3(c).

2.2 Scenario Analysis

In order to elaborate further on above analysis, the study placed each distinct group against another group, observing RPT under four different dispute scenarios : i) developed country against another developed country, ii) developed country as a respondent against a complainant who is a developing country, iii) developing country as a respondent against a complainant who is a developed country, and last but not least, iv) developing country against another developing country. The number of disputes and average RPT of each scenario was assessed in Table 3 as written below.

¹³⁷ Ecuador, Guatemala, Honduras received longest RPT as a complainant (15.23 months each respectively), followed by Argentina (13 months). Refer to <Appendix 6> for more details.

Table 4. Dispute Scenarios based on Parties' Economic Status and Development Level

Respondent	Complainant	Question	Article 21.3(b)	Article 21.3(c)
Developed	Developed	# of Disputes	37 disputes (34.26%)	23 disputes (42.59%)
		Average RPT	9.76 months	11.43 months
		Average Gap ¹³⁸	-	11.22 months
Developed	Developing	# of Disputes	28 disputes (25.92%)	19 disputes (35.19%)
		Average RPT	9.84 months	12.02 months
		Average Gap	-	10.26 months
Developing	Developed	# of Disputes	30 disputes (27.78%)	10 disputes (18.52%)
		Average RPT	9.47 months	11.81 months
		Average Gap	-	14.50 months
Developing	Developing	# of Disputes	13 disputes (12.04%)	2 disputes (3.70%)
		Average RPT	8.71 months	11.25 months
		Average Gap	-	9.58 months

2.2.1 DSU Article 21.3(b)¹³⁹

When each distinct group was placed in actual dispute against another country, longer RPT was agreed when respondent is a developed country and complainant is a developing country. This is an interesting finding since even though developing group as a whole received shorter RPT as complainant, those developing countries in dispute against developed countries as complainant received longer RPT. It was expected that RPT would be longer than other types of cases when both respondent and complainant were developing countries due to establishment of mutual understanding between the parties on each other's economic status as a developing country. Interestingly, however, in such circumstances, shorter RPT was agreed

¹³⁸ "Average Gap" indicates the gap between RPT proposed by the respondent and that by the complainant. Thus, this measure only applied to RPTs awarded under DSU Article 21.3(c).

¹³⁹ Refer to <Appendix 7> for more details.

between the parties. This may be due to the fact that all disputes between developing countries required administrative means of implementation for compliance, which tends to require shorter length of time for implementation than those disputes in need of legislative means of implementation.

2.2.2 DSU Article 21.3(c)¹⁴⁰

Similar to results from DSU Article 21.3(b), longer RPT was granted when respondent is a developed country and complainant is a developing country. Again, shorter RPT was awarded when both parties were developing countries. Moreover, it was also found that the average gap between the RPT proposed by the respondent and complainant was the greatest when respondent is a developing country and complainant is a developed country.¹⁴¹ On the other hand, such gap was smallest when both respondent and complainants were developing countries.

2.2.3 DSU Article 21.3(b) vs. DSU Article 21.3(c)

Supporting previous finding that developed countries were the most frequent users of DSU Article 21.3(b) and DSU Article 21.3(c) as both complainant and respondent, most of the trade conflict arose between developed countries. When RPT was simply compared as a single group of those agreed by or awarded to 'Respondent-Developing', 'Respondent-Developed', 'Complainant-Developing', and 'Complainant-Developed', it was found that developing countries tend to enjoy better benefits with longer RPT as a respondent under DSU Article 21.3(c) and with shorter RPT as a complainant under DSU Article 21.3(b).

¹⁴⁰ Refer to <Appendix 8> for more details.

¹⁴¹ Refer to <Appendix 7> for more details.

Interestingly, however, different outcome was generated when each group was placed in a dispute against another group, i.e., affected by counterpart's economic status and exposed to other external factors. Unlike findings in 'Group Analysis' (Section 2.1 of the 'V. Analysis and Result') it was found that developing countries actually do not enjoy better benefits with shorter RPT as a complainant under both DSU Article 21.3(b) and DSU Article 21.3(c), especially against a respondent who is a developed country. Moreover, it was found that developing countries also do not enjoy benefit as a respondent with longer RPT under both DSU Article 21.3(b) and DSU Article 21.3(c) since developing countries were entitled to shorter RPT as respondent than when developed countries were respondent of a dispute.

In conclusion, even though it is said that developing countries shall receive special attention under WTO dispute settlement procedure, empirical analysis above showed that such special and differential treatment may not be easily granted in practice, at least in terms of determining RPT.

2.3 Statistical Analysis

2.3.1 DSU Article 21.3(b)

2.3.1.1 F-test

Before moving on to correlational and regression analysis, the study first used F-test to observe variances of two populations, i.e., RPT conferred to developing and developed countries via agreement between respondent and complainant countries.

Table 5. Result from F-Test (Article 21.3(b))

	Respondent		Complainant	
	Developing	Developed	Developing	Developed
Variance	19.656	9.004	20.417	9.098
P (F<=f) One-Tail	0.0023		0.0019	
F	2.183		2.244	
F Critical One-Tail	1.574		1.581	

When F-test was applied to RPT of respondents and complainants each separately under DSU Article 21.3(b), the result showed that there is a meaningful difference between variance of RPT conferred to developing countries and those conferred to developed countries when these countries participated in disputes as respondents and complainants. ('F' value was greater than the 'F Critical one-tail' and 'P (F<=f) one-tail' was smaller than $\alpha=0.05$ from 95% confidence intervals).

2.3.1.2 Correlational Analysis

Table 6. Factor 1 - Result from Correlational Analysis (Article 21.3(b))

	Respondent	Complainant
Correlation Coefficient (r)	0.047	0.171
Pearson R²	0.002	0.029
Equation	$y = 9E-06x + 9.341$	$y = 3E-05x + 8.828$

In order to measure how strong the relationship is between RPT and the economic status of complainant and respondent, the study engaged in correlational analysis. Correlational analysis showed that there is a positive relationship between the economic status of respondent and complainant with RPT, i.e., greater the GNI/capita, longer the RPT and vice versa. Such result coincides with the result from 'Group Analysis' section (Section 2.1 of the 'V. Analysis and Result') that developed countries with greater GNI/capita tend to reach agreement with longer RPT as both respondent and

complainant. Even though correlation coefficient was very small, indicating that there is a very weak relationship (below 0.2) between economic status of a respondent and complainant with RPT, the correlation coefficient of complainant was approximately 3.64 times greater than that of the respondent, indicating that complainant's GNI/capita has relatively stronger relationship with RPT.

2.3.1.3 Regression Analysis

Table 7. Factor 1 - Result from Regression Analysis (Article 21.3(b))

* Confidence Intervals 95% ($\alpha=0.05$)

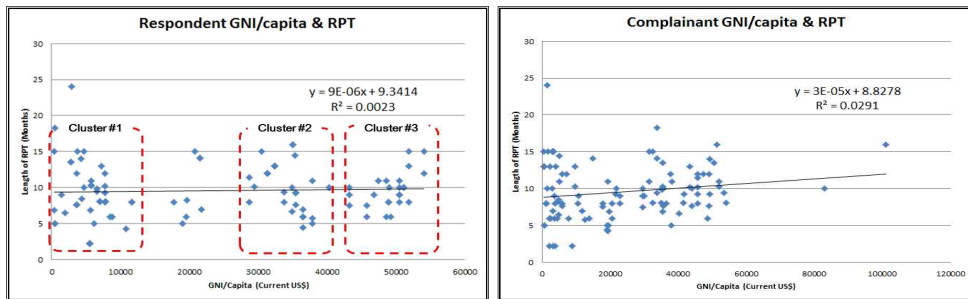
	Respondent	Complainant
Pearson R²	0.002	0.029
Significance F & p-Value	0.626	0.077

In addition to correlational analysis, the study also ran a regression to observe whether change in length of RPT can be explained by the size of GNI/capita of respondent and complainant. Coefficient of determination, R², was small in both cases, confirming duration of RPT cannot be explained by the economic status of respondent and complainant.¹⁴² However, the R² of complainant was 14.5 times greater than that of the respondent, indicating that the complainant's GNI/capita had more effect on duration of RPT than that of the respondent.

Interestingly, the scatter plot demonstrating relationship between duration of RPT and GNI/capita of respondent under DSU Article 21.3(b) displayed three distinctive clusters, while no such clusters were found in scatter plot for complainant GNI/capita and duration of RPT. When each cluster was segregated and analyzed in depth, it was found that such clusters are formed due to difference in size of GNI/capita of respondent.

¹⁴² The result of regression analysis showed that GNI/Capita of Respondent can explain only 0.2% of change in length of RPT, while GNI/Capita of complainant can explain 2.9% of change in length of RPT.

Figure 4. Scatter Plot from Statistical Analysis - Article 21.3(b) (Factor 1)



Cluster #3, especially, included data of RPT from most recent WTO disputes where the United States participated in dispute as a respondent. Furthermore, when statistical analysis was applied to each cluster group separately, it was found that the size of GNI/capita of respondent does explain duration of RPT when respondent is a developed country (one-tailed p-value was smaller than $\alpha=0.05$ from 95% confidence intervals for both Cluster #2 and Cluster #3 which includes data of RPT agreed by developed respondent countries). Approximately 16.7% and 27.5% of the change in duration of RPT can be explained by the size of GNI/Capita for Cluster #2 and Cluster #3, each respectively. For Cluster #3, such result implies that the United States, as a developed country, whether intended or not, has been agreeing on RPT considering its counterpart's economic status as a developing country.

Table 8. Result from Statistical Analysis - Cluster Group

* Confidence Intervals 95% ($\alpha=0.05$)

	Cluster #1	Cluster #2	Cluster #3
Correlation Coefficient (r)	-0.279	-0.409	0.524
Degree/Direction of Relationship¹⁴³	Negative /Weak	Negative /Moderate	Positive /Moderate
Pearson R²	0.077	0.167	0.275

In conclusion, overall statistical analysis showed that even though significant difference in variance exists between RPT conferred to developing and developed countries via agreement between the parties under DSU Article 21.3(b), the result of correlation and regression analysis indicates there is a limit to state that such difference in variance between two populations is due to different size of GNI/capita of both respondent and complainant.

2.3.2 DSU Article 21.3(c)

2.3.2.1 F-Test

Table 9. Result from F-Test (Article 21.3(c))

	Respondent		Complainant	
	Developing	Developed	Developing	Developed
Variance	3.052	6.199	4.617	6.042
p-Value (F<=f) One-Tail	0.103		0.267	
F	2.031		1.308	
F Critical One-Tail	2.528		2.028	

When F-test was applied to RPT of respondents and complainants each separately under DSU Article 21.3(c), the result showed that no meaningful difference exists between variance of RPT conferred to developing countries and those conferred to developed countries ('F' value was smaller than the 'F Critical one-tail' and 'P (F<=f) one-tail' was greater than $\alpha=0.05$ from confidence intervals of 95%).

¹⁴³ For statistical analysis in social science studies, correlational coefficient between 0.4 and 0.6 is interpreted as moderate relationship. Correlational coefficient below 0.4 indicates weak correlational relationship, while above 0.6 indicates strong relationship between the two variables.

2.3.2.2 Correlational Analysis

Table 10. Factor 1 - Result from Correlational Analysis (Article 21.3(c))

	Respondent	Complainant
Correlation Coefficient (r)	-0.108	-0.130
Pearson R²	0.012	0.017
Equation	$y = -2E-05x + 12.152$	$y = -2E-05x + 12.109$

Interestingly, opposite from the result of DSU Article 21.3(b), negative relationships were found between the economic status of respondent and complainant with RPT, i.e., greater the GNI/capita, shorter the RPT and vice versa. This confirmed previous finding that developed countries received shorter RPT both as a respondent and as a complainant under DSU Article 21.3(c). Even though correlation coefficient was small, close to zero, the correlation coefficient of complainant was slightly (1.2 times) stronger than that of the respondent.

2.3.2.3 Regression Analysis

Table 11. Factor 1 - Result from Regression Analysis (Article 21.3(c))

* Confidence Intervals 95% ($\alpha=0.05$)

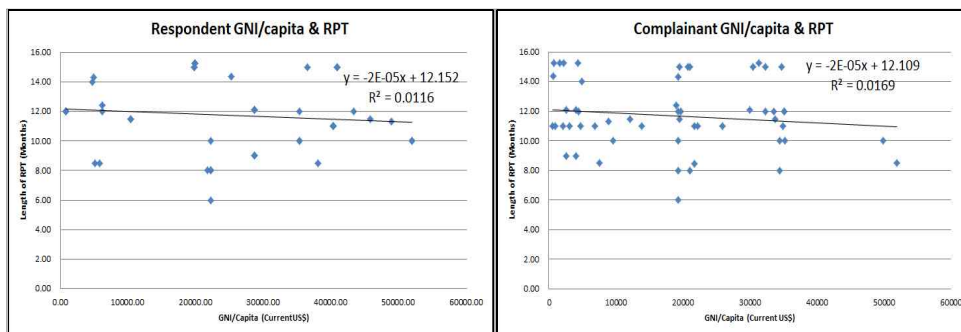
	Respondent	Complainant
Pearson R²	0.012	0.017
Significance F & p-Value	0.439	0.349

Similar to result from DSU Article 21.3(b), small coefficient of determination, R², close to zero, indicated that the size of GNI/Capita of respondent and complainant are inadequate to explain the length of RPT.

Unlike the scatter plot from DSU Article 21.3(b), which showed three unique clusters in demonstrating the relationship between GNI/Capita of respondent and duration of RPT, no such clusters were found in the case of DSU Article 21.3(c) for both respondent and complainant. Such observation

demonstrates that even though the legal text of DSU clearly states that special and differential treatment shall be granted to developing countries throughout the dispute settlement procedure, respondent countries, especially the developed countries, tend to consider its counterpart's economic status more than the DSB Arbitrators, with having more discretion in applying certain factors and principles to determine RPT under DSU Article 21.3(b).

Figure 5. Scatter Plot from Statistical Analysis - Article 21.3(c) (Factor 1)



Overall, the statistical analysis showed that there is no significant difference in variance between RPT conferred to developing and developed countries by the arbitrator and the result of correlation and regression analysis also found that the change in duration of RPT cannot be explained by the change in size of GNI/Capita of respondent and complainant under DSU Article 21.3(c).

2.3.3. DSU Article 21.3(b) vs. 21.3(c)

Even though it was found that the relationship between economic status of respondent and complainant with length of RPT is weak, it is pertinent to note some of the key findings. Comparing correlation coefficient and R^2 from statistical analysis of DSU Article 21.3(b) and 21.3(c), it was found that the gap between the strength of relationship between respondent

and complainant's economic status with RPT was smaller under DSU Article 21.3(c) compared to that of DSU Article 21.3(b). Such finding indicates that the benefit accrued to respondent or complainant developing countries, considering their economic status, is much greater under DSU Article 21.3(b) than DSU Article 21.3(c). This may be due to the fact that parties are allowed to be more flexible in terms of considering various factors in reaching agreement on RPT under DSU Article 21.3(b), thus able to establish peaceful mutual understanding regarding each other's economic status, while RPT under DSU Article 21.3(c) is awarded by the arbitrator who is mandated to consider legal interpretation of the said provision and often adopts reasoning from previous disputes, thus relatively more rigid in providing special treatment due to parties' economic status. Actually, in practice, most DSU Article 21.3(c) arbitrators required developing countries to provide supporting evidence and proof to demonstrate how shorter RPT (when developing country is a complainant) or longer RPT (when developing country is a respondent) may damage their interest and benefit as developing countries in order to receive special attention or treatment, which is not required or necessary under DSU Article 21.3(b).

Furthermore, since correlational analysis was conducted by observing GNI/capita of each individual respondent and complainant with RPT, independent from any influence from counterpart's economic status or other possible external factors, similar to the analysis designed for the 'Group Analysis' (Section 2.1 from Section V 'Analysis and Result'), similar findings were confirmed, i.e., developing countries tend to enjoy better benefits with longer RPT as a respondent under DSU Article 21.3(c) due to negative correlational relationship and with shorter RPT as a complainant under DSU Article 21.3(b) due to positive correlational relationship.

2.4 Review of the Past DSU Article 21.3(c) Arbitration Report : On Economic Status and Development Level

Since this study has generated statistical results on patterns and relationship between economic status and development level with length of RPT, it is pertinent to observe how above empirical results are actually reflected in practice. Since no official report is published in WTO on how parties have reached agreement on RPT under DSU Article 21.3(b),¹⁴⁴ the study will solely discuss its review on past DSU Article 21.3(c) Award of the Arbitrator report.

According to the legal text of DSU, special rules and procedures has been provided for developing countries in every step of the dispute settlement procedure.¹⁴⁵ Regarding implementation of recommendation and ruling, DSU Article 21.2 states that "particular attention should be paid to matters affecting the interest of developing country Members with respect to measures which have been subject to dispute settlement." The DSU further states that if the matter is raised by a developing country Member, the DSB shall consider what further appropriate action to take¹⁴⁶ and that if the case is brought by a developing country Member, in considering what appropriate action to take, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.¹⁴⁷ Even though this may be the case in theory, it has been found from above in-depth analysis that developing countries do not fully enjoy special attention in terms of determining duration of RPT.

¹⁴⁴ Parties only publish an official communication on how both have agreed on certain length of RPT. Any rationale or reasoning behind their agreement is not disclosed.

¹⁴⁵ Please refer to <Appendix 2> for relevant DSU Articles granting special treatment and/or attention to developing countries.

¹⁴⁶ DSU, Article 21.7.

¹⁴⁷ DSU, Article 21.8.

First of all, when implementing party is a developing country, it has been found in the above 'Group Analysis' that respondent who are developing countries were actually awarded with longer RPT compared to other groups. Furthermore, in the 'Scenario Analysis,' it has been found that developing country as a respondent enjoy some benefit due to its economic status, especially against a complainant who is a developed country, for its RPT turned out to be longer than the scenario where a respondent is a developed country in dispute against a complainant who is also a developed country. Such result was also confirmed by correlational and regression analysis.

Interestingly, such statistical result was reflected in actual practice. Among six disputes under DSU Article 21.3(c) where respondent was a developing country and complainant was a developed country, developing countries received special treatment under DSU Article 21.3(c) with longer RPT when it is an implementing member (respondent) of a dispute. In *Indonesia - Autos* (DS54,55,59,64), arbitrator granted additional period of six months considering Indonesia's status as a developing country with severe economic and financial situation.¹⁴⁸ In *Chile - Alcohol* (DS87,110), arbitrator gave additional time due to Chile's status as a developing country by inserting that "DSU Article 21.2 enjoins an arbitrator to be generally mindful of the great difficulties that a developing country Member may, in a particular case, face as it proceeds to implement the recommendations and rulings for the DSB."¹⁴⁹ Similarly, the arbitrator from *Argentina - Bovine Hides* (DS155) also considered Argentina's economic status as a developing

¹⁴⁸ Award of the Arbitrator (7 December 1998), *Indonesia - Certain Measures Affecting the Automobile Industry* [hereinafter "Indonesia - Autos"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, para. 24.

¹⁴⁹ Award of the Arbitrator (23 May 2000), *Chile - Taxes on Alcoholic Beverages* [hereinafter "Chile - Alcohol"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS87/15, WT/DS110/14, paras. 41-45.

country confronted with severe economic problems.¹⁵⁰ In other three disputes, *Korea - Alcohol* (DS75,84), *Brazil - Tyres* (DS332) *China - GOES* (DS414), developing country as a respondent did not request for special attention or treatment due to their economic status and development level.

However, it is pertinent to note here that implementing countries from those three disputes with longer period of RPT may have received special attention not simply because of their status as developing countries, but mainly due to their dire financial and economic circumstances at the time of adoption of panel (and Appellate Body) report.¹⁵¹ Thus, these disputes demonstrate that it is extremely difficult for developing countries to receive special attention, unless there are significant unavoidable circumstances.

Regarding disputes where complainant country is a developing country, the 'Group Analysis' found that longer RPT was granted when complainant is a developing country. Similar result was also found in 'Scenario Analysis' where complainant developing country received longer RPT compared to other scenarios when they are in trade disputes against a respondent developed country, i.e., developing country as complainant were not granted with special attention or treatment due to their economic status. Again, the result was confirmed by correlational and regression analysis.

Actually, as found in the empirical analysis, arbitrators in previous disputes were not easily convinced when special attention or treatment was requested by a complainant who is a developing country. *EC - Bananas* (DS27) was the very first dispute under DSU Article 21.3(c) where developing members (Ecuador, Guatemala, Honduras, Mexico) filed a complaint against a developed member (European Communities). Even though complainants requested for special attention to be given for their

¹⁵⁰ Award of the Arbitrator (31 August 2001), *Argentina - Measures Affecting the Export of Bovine Hides and Import of Finished Leather* [hereinafter "Argentina - Bovine Hides"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS155/10, paras. 50-51.

¹⁵¹ Lee and Kim, "A Study on WTO Dispute Settlement Process: Focusing on the Reasonable Period of Time," 146.

interest as developing countries, the arbitrator imposed more weight on the language of DSU Article 21.3(c) than considering complainants' economic status, granting 15 months and 1 week as RPT, adhering to the fifteen months guideline.¹⁵²

As more RPT were awarded via arbitration under DSU Article 21.3(c), arbitrators began to pay more attention to the matter of considering developing country's status in determining RPT. In *US - Offset Act* (DS217,234), arbitrator for the first time actually provided comment on the argument made by certain developing countries that arbitrator must pay particular attention to matters affecting the interests of developing country Members due to DSU Article 21.2.¹⁵³ However, arbitrator rejected complainants' argument by stating that the complaining parties have not explained specifically how developing country Members' interests should affect arbitrator's determination of the reasonable time period for implementation.¹⁵⁴

The arbitrator in *EC - Tariff Preference* (DS246) also rejected India's assertion based on the same reasoning.¹⁵⁵ Antigua and Barbuda, as a complainant of *US - Gambling* (DS285), actually provided evidence and explanation, seeking to receive special attention as a developing country. However, the arbitrator rejected Antigua and Barbuda's claim by raising the very same reasoning that has been stated by the arbitrator from *US - Offset Act* (DS217,234) and *EC - Tariff Preference* (DS246) that Antigua and Barbuda did not provide specific data in support of its arguments and did not seek to demonstrate any clear relationship between the decline of its industry and the measures which were subject to dispute, thus failing to

¹⁵² Award of the Arbitrator, *EC - Bananas* (Article 21.3(c)), paras. 18-20.

¹⁵³ Award of the Arbitrator, *US - Offset Act* (Article 21.3(c)), para. 81.

¹⁵⁴ Ibid.

¹⁵⁵ Award of the Arbitrator (20 September 2004), *European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries* [hereinafter "EC - Tariff Preferences"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS246/14, paras. 57-59.

satisfy criteria expressly mentioned in DSU Article 21.2.¹⁵⁶

Brazil from *EC - Chicken Cuts* (DS269,286) was also successful in providing satisfactory explanation and evidence to request for particular attention as a developing country. However, emphasizing that the reasonable period of time shall be the shortest period of time possible, arbitrator concluded that the reasonable period of time for implementation is not additionally affected by the fact that Brazil is a developing country.¹⁵⁷ Applying the same reasoning as the *EC - Chicken Cuts* (DS269,286), arbitrator rejected Mexico's assertion for particular attention due to its status as a developing country in *US - COOL* (DS384,386) by imposing more weight on the fact that reasonable period of time for implementation shall be the shortest period possible and complainant's status as a developing country should not affect his final determination.¹⁵⁸

In *US - OCTG* (DS268), arbitrator outright rejected complainant's request for particular attention by stating that complainant's size of the economy or development level is irrelevant in determining duration of RPT.¹⁵⁹ Interestingly, however, the same arbitrator later applied Article 21.2 in *EC - Sugar Subsidies* (DS265,266,283), inserting that the DSU Article 21.2 should be interpreted as directing an arbitrator to pay particular attention to matters affecting the interests of *both an implementing and complaining developing country Member* (emphasis added) and thus complainants' status as developing countries was, in fact, a relevant factor to be taken into account in determining reasonable period.¹⁶⁰

¹⁵⁶ Award of the Arbitrator, *US - Gambling* (Article 21.3(c)), paras. 62-63.

¹⁵⁷ Award of the Arbitrator (20 February 2006), *European Communities - Customs Classification of Frozen Boneless Chicken Cuts* [hereinafter "EC - Chicken Cuts"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS269/13, WT/DS286/15, paras. 81-82.

¹⁵⁸ Award of the Arbitrator (4 December 2012), *United States - Certain Country of Origin Labelling (COOL) Requirements* [hereinafter "US - COOL"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS384/24, WT/DS386/23, paras. 99-100.

¹⁵⁹ Award of the Arbitrator (7 June 2005), *United States - Sunset Review of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* [hereinafter "US - OCTG"], WT/DS268/12, paras. 47-28, and 52.

¹⁶⁰ Award of the Arbitrator, *EC - Sugar Subsidies* (Article 21.3(c)), para. 99.

Lastly, statistical analysis has found that shortest RPT is granted when developing country is challenged by another developing country as a complainant, indicating that granting special treatment to developing countries does not play a role in determining RPT in such cases. The very first dispute involving two developing countries was *Chile - Agricultural Products* (DS207). Even though arbitrator recognized that the terms of DSU Article 21.2 are relevant for both Chile and Argentina, he concluded that he is not swayed towards either a longer or shorter period of time by the particular attention he pays to the interest of developing countries.¹⁶¹ In *Colombia - Ports of Entry* (DS366), arbitrator stated that “in a situation where both the implementing and the complaining Member are developing countries, the requirement provided in DSU Article 21.2 is of a little relevance.”¹⁶² Even though the reasoning of the two arbitrators are slightly different, it is concluded that particular attention to developing country is not considered in determining RPT when both parties of dispute are developing countries.

In conclusion, both statistical analysis and normative review of previous WTO disputes under DSU Article 21.3(c) found that even though granting special attention to developing countries and degree of such treatment differ in each dispute, arbitrators are consistent in applying conservative interpretation of relationship between DSU Article 21.2 and Article 21.3(c), especially when complainant is a developing country, i.e., special attention to developing countries is not granted consistently under the current dispute settlement system and it is even tougher for developing countries who participate in a dispute as a complainant. On the other hand, it was found that parties' economic status and development level are more

¹⁶¹ Award of the Arbitrator, *Chile - Agricultural Product* (Article 21.3(c)), para. 56.

¹⁶² DSU Article 21.2 directs arbitrators acting under Article 21.3(c) to pay “particular attention to matters affecting the interests of both an implementing and complaining developing country Member or Members, given that the scope of this provision is not textually limited to either of these parties.” (from Report of the Panel (27 April 2009), *Colombia - Indicative Prices and Restrictions on Ports of Entry*, WT/DS366/R, para. 104-107.)

taken into consideration by the disputants under DSU Article 21.3(b), due to greater discretion granted to parties in agreeing on specific period of RPT.

3. Factor 2 - Protection Level of Product at Issue

Table 12. Overview - Protection Level (Tariff Rate) and Duration of RPT

		DSU Article 21.3(b)	DSU Article 21.3(c) ¹⁶³
Respondent	Highest Tariff Rate	60% ¹⁶⁴	47.53% ¹⁶⁵
	Lowest Tariff Rate	0% ¹⁶⁶	0% ¹⁶⁷
	Average Tariff Rate	10.43%	13.40%
Complainant	Highest Tariff Rate	70% ¹⁶⁸	38.08% ¹⁶⁹
	Lowest Tariff Rate	0% ¹⁷⁰	0% ¹⁷¹
	Average Tariff Rate	7.96%	8.01%

The second statistical analysis focused on relationship between the protection level of product at issue of dispute with the duration of RPT. The protection level was measured in MFN (Most Favored Nation) Applied tariff rate. Brief overview of patterns of RPT in relation to protection level of product at issue is shown in Table 12.

¹⁶³ Under DSU Article 21.3(c), there were two disputes where non-ad valorem tariff was applied: *Japan – Alcohol* (DS8,10,11) and *Chile – Alcohol* (DS87,110). Since Parties applied \$/l or €/l unit in measuring tariff, which could not be converted into percentage, these two cases were excluded in analyzing relationship between RPT and tariff rates of the respondent and complainant. Moreover, since products at issue of *EC – Tariff Preference* (DS246) were “imports benefiting from the Drug Arrangements under the EC GSP scheme,” affecting approximately 60% of EC’s total imports, this dispute was also excluded from analysis.

¹⁶⁴ Thailand’s MFN Applied Tariff Rate on Cigarettes (HS2402) from *Thailand – Cigarettes* (DS371).

¹⁶⁵ Indonesia’s MFN Applied Tariff Rate on autos and auto parts (HS8702~8704, 8706~8709, 8711, 8714) from *Indonesia – Autos* (DS54,55,59,64).

¹⁶⁶ Respondents from 16 cases applied 0% MFN Tariff Rate. Refer to <Appendix 9>.

¹⁶⁷ Respondents from 4 cases applied 0% MFN Tariff Rate. Refer to <Appendix 10>.

¹⁶⁸ The United States MFN Applied Tariff Rate on biotech products (HS0701, 0702, 070521, 1005, 110220, 110313, 110423, 1201, 1205, 1209, 2403, 5201) from *EC – Biotech Products (“GMO”)* (DS291,292,293).

¹⁶⁹ Thailand’s MFN Applied Tariff Rate on chicken and chicken products (HS0207, 0210) from *EC – Chicken Cuts* (DS269,286).

¹⁷⁰ Complainants from 17 disputes applied 0% MFN Tariff Rate. Refer to <Appendix 9>.

¹⁷¹ Respondents from 7 disputes applied 0% MFN Tariff Rate. Refer to <Appendix 10>.

3.1 DSU Article 21.3(b)

Table 13. Factor 2 - Result from Correlational Analysis (Article 21.3(b))

	Respondent	Complainant
Correlation Coefficient (r)	-0.014	0.055
Pearson R²	0.0002	0.003
Equation	$y = -0.365x + 9.475$	$y = 1.754x + 9.297$

Interestingly, while the duration of RPT and respondent's protection level of product at issue showed negative relationship, i.e., higher the tariff rate (high level of protection level), shorter the RPT and vice versa, RPT and complainant's protection level of product at issue showed positive relationship, i.e., higher the tariff rate (high level of protection level), longer the RPT and vice versa. Such result demonstrates complete opposite phenomenon from original assumption that higher the protection level in respondent country would likely result in longer RPT (positive relationship), while higher the protection level in complainant country would likely result in shorter RPT (negative relationship).

Moreover, comparing key numbers generated from correlational analysis, it was found that relationship between the protection level of product issue in complainant country, measured in tariff rate, had stronger relationship (3.9 times) with RPT than that of the respondent. Such observation was also confirmed by the size of coefficient of determination (R² of the complainant was 15 times greater than that of the respondent). Overall, however, such relationships proved to be weak for both complainant and respondent, with correlation coefficient and coefficient of determination, R², close to 0.

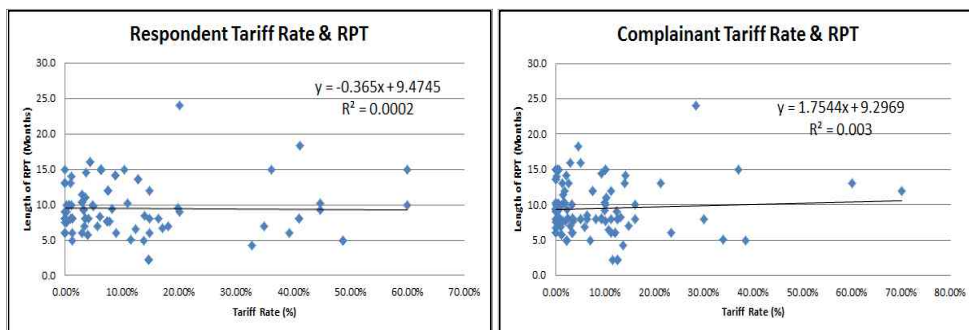
Table 14. Factor 2 - Result from Regression Analysis (Article 21.3(b))

* Confidence Intervals 95% ($\alpha=0.05$)

	Respondent	Complainant
Pearson R²	0.0002	0.003
Significance F & p-Value	0.886	0.576

Even though weak relationship was found between protection level of product at issue and length of RPT from correlational analysis, the study further engaged in regression analysis. With one-tailed p-value greater than $\alpha=0.05$ from confidence intervals of 95%, the regression analysis showed change in duration of RPT cannot be explained by the protection level of product at issue in both respondent and complainant countries under DSU Article 21.3(b), confirming result from above correlational analysis. Moreover, no significant cluster was found from scatter plots as shown below.

Figure 6. Scatter Plot from Statistical Analysis - Article 21.3(b) (Factor 2)



Overall, since it is logically infeasible for a respondent with high protection level of product at issue to agree with shorter RPT and for it also has been found that there is a very weak, negative relationship between the duration of RPT with the protection level of product at issue of a respondent, it is concluded that protection level of product at issue of respondent does not affect the length of RPT. Similarly, for it is not

logically sensible for a complainant country dealing with economically or socially sensitive product to agree with longer RPT and since very weak positive relationship has been found via correlational analysis, it is concluded that protection level of product at issue of complainant country is not a factor to be considered in determining RPT under DSU Article 21.3(b).

3.2 DSU Article 21.3(c)

Table 15. Factor 2 - Result from Correlational Analysis (Article 21.3(c))

	Respondent	Complainant
Correlation Coefficient (r)	0.212	0.127
Pearson R²	0.045	0.016
Equation	$y = 3.834x + 11.111$	$y = 3.693x + 11.329$

Unlike results from DSU Article 21.3(b), both the respondent and complainant's protection levels of product at issue showed positive relationship with RPT. Such observation supports part of the original assumption that higher the protection level in respondent country would likely result in longer RPT (positive relationship), but not so in the case for the complainant since the result showed that higher the protection level in complainant country would also likely result in longer RPT.

While stronger relationship was shown between complainant's protection level of product at issue with length of RPT under DSU Article 21.3(b), the respondent's protection level of product at issue with RPT was stronger (1.67 times greater than correlation coefficient of complainant) under DSU Article 21.3(c). The coefficient of determination, R², was also 2.8 times greater than that of the complainant. This demonstrates that respondent country's tariff rate of product at issue tends to impose stronger influence on RPT than that of the complainant country. Nevertheless, since

both the correlation coefficient and coefficient of determination were close to 0, it is concluded that there is no significant relationship between the protection level of product at issue in complainant and respondent countries with RPT under DSU Article 21.3(c).

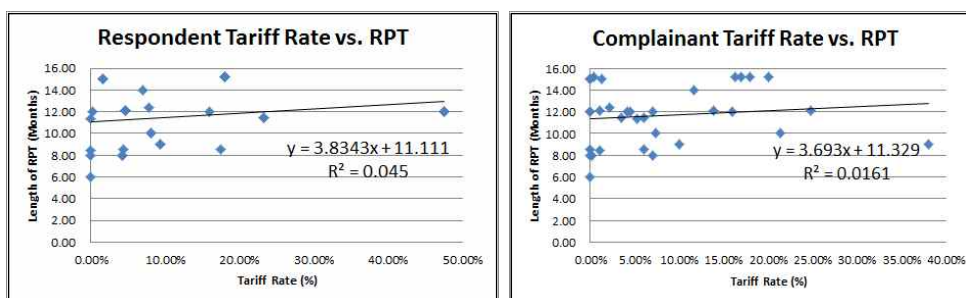
Table 16. Factor 2 - Result from Regression Analysis (Article 21.3(c))

* Confidence Intervals 95% ($\alpha=0.05$)

	Respondent	Complainant
Pearson R²	0.045	0.016
Significance F & p-Value	0.236	0.482

In addition to correlational analysis, the study also engaged in regression analysis. Similar to result from DSU Article 21.3(b), one-tailed p-value was greater than $\alpha=0.05$ from confidence intervals of 95%, indicating duration of RPT cannot be explained by the protection level of product at issue in both respondent and complainant countries under DSU Article 21.3(c), supporting result from above correlational analysis. Again, no significant cluster was found from scatter plots as shown below.

Figure 7. Scatter Plot from Statistical Analysis - Article 21.3(c) (Factor 2)



In summary, it is concluded that there is no significant relationship between the protection level of product at issue of respondent and complainant country in relation to the duration of RPT under both DSU Article 21.3(b) and 21.3(c).

4. Factor 3 - Means of Implementation

4.1 Overview

Table 17. Means of Implementation and Length of RPT

Means of Implementation		DSU Article 21.3(b)¹⁷²	DSU Article 21.3(c)¹⁷³
Legislative	# of Cases	24 (27.91%)	16 (59.26%)
	Average RPT	11.08 months	12.62 months
Administrative	# of Cases	62 (72.09%)	11 (40.74%)
	Average RPT	9.13 months	9.56 months

The next analysis focused on relationship between duration of RPT and the means of implementation. According to the analysis above, majority of disputes implemented rules and recommendations of DSB via legislative means of implementation under DSU Article 21.3(c). Unlike DSU Article 21.3(c), majority of disputes under DSU Article 21.3(b) implemented DSB's recommendation via administrative means of implementation. Such difference may occur due to the way process of determining RPT has been structured under DSU Article 21.3(b) and Article 21.3(c) and also due to different perspectives complainant and respondent have on means of implementation.

According to DSU Article 21.3, the parties who fail to reach agreement on RPT request for arbitrated RPT under DSU Article 21.3(c). Since legislative means of implementation requires significant length of time to complete the process, it is highly unlikely for complainant to agree with respondent if it chooses to achieve compliance via legislative process, unless legislative means of implementation is the one and only way for the respondent to comply to the WTO law. Thus, in most cases, parties of disputes will both agree on administrative means of implementation or

¹⁷² Refer to <Appendix 11> for more details

¹⁷³ Refer to <Appendix 12> for more details.

otherwise argue against one another between administrative and legislative means of implementation.

Since the length of RPT is closely related to means of implementation, if both parties agree that administrative means is the only available option to be selected by the respondent to bring WTO inconsistent measure into compliance, then it is also likely for complainant and respondent to agree on RPT. Moreover, since administrative means of implementation is less complicated and thus requires shorter amount of time, it is easier to reach an agreement in terms of duration of RPT. On the other hand, when respondent and complainant disagree on which means shall be adopted by the respondent, it is more probable for parties to disagree on length of RPT, thus moving on to the DSU Article 21.3(c) in request for arbitrated RPT, resulting in most disputes under DSU Article 21.3(c) to be those in need of legislative means of implementation.

In addition, as shown in Table 17, RPT for disputes requiring legislative means of implementation were much longer than those requiring administrative means of implementation, even longer than the overall average RPT of all disputes, indicating that the means of implementation is a critical factor affecting RPT under both DSU Article 21.3(b) and 21.3(c).

4.2 Statistical Analysis

In order to test if significant relationship exists between the means of implementation and duration of RPT, first, the study applied F-test to observe difference in variance of two populations at issue: RPT determined from disputes in need of administrative means and those in need legislative means for compliance.

Table 18. Factor 3 - Result from F-Test

	Article 21.3(b)		Article 21.3(c)	
	Administrative	Legislative	Administrative	Legislative
Variance	13.008	9.652	4.317	4.429
P (F<=f) one-tail	0.212		0.467	
F	1.348		1.026	
F Critical one-tail	1.842		2.544	

With 'F' value smaller than the 'F Critical one-tail' and 'P (F<=f) one-tail' greater than $\alpha=0.05$ from confidence intervals of 95%, the result showed there is no meaningful difference between variance of two populations: RPT determined for disputes in need of administrative and legislative means of implementation for compliance under both DSU Article 21.3(b) and Article 21.3(c).

Table 19. Factor 3 - Result from Regression Analysis

* Confidence Intervals 95% ($\alpha=0.05$)

	DSU Article 21.3(b)	DSU Article 21.3(c)
Pearson R²	0.066	0.358
Significance F & p-Value	0.017	0.00097

Interestingly, regression analysis generated meaningful results. Since independent variable, the means of implementation, is qualitative, the study used dummy variables¹⁷⁴ to run regression. With one-tailed p-values smaller than $\alpha=0.05$ from confidence intervals of 95%, the regression analysis showed that the independent variable, means of implementation, can explain approximately 6.6% and 35.8% of change in length of RPT, under DSU Article 21.3(b) and 21.3(c), each respectively. Thus, statistical analysis demonstrated that means of implementation has significant and meaningful relationship with duration of RPT under both provisions at issue.

¹⁷⁴ The study used '0' for RPT from disputes in need of administrative means for compliance and '1' for RPT from disputes in need of legislative means for compliance.

4.3 Review of the Past DSU Article 21.3(c) Arbitration Report

: On Means of Implementation

The importance of means of implementation in determining RPT, especially under DSU Article 21.3(c), has been also reflected in previous disputes. *Canada - Pharmaceuticals* (DS114) was the very first dispute where arbitrator explicitly stated that the means of compliance is a factor to be considered for "particular circumstances."¹⁷⁵ Moreover, the arbitrator also stated that if implementation is by administrative means, such as through a regulation, then the reasonable period of time will normally be shorter than for implementing through legislative means.¹⁷⁶ Additionally, the arbitrator suggested following relevant factors shall be examined in determining RPT: i) the means of implementation, in that regulatory changes typically take less time than legislative changes, ii) the complexity of the change, e.g., whether consultation with a large number of groups is required, and iii) whether the time frame of the amendment process is of a legally binding or mandatory nature or whether the timing or the process is subject to discretion.¹⁷⁷ The arbitrators in other disputes, including *US - Copyright Act* (DS160)¹⁷⁸ and *Colombia - Ports of Entry* (DS366)¹⁷⁹, all agreed that means of compliance is a critical factor in determining the duration of RPT.

¹⁷⁵ Award of the Arbitrator, *Canada - Pharmaceuticals* (Article 21.3(c)), para. 37.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid., paras. 48-52.

¹⁷⁸ Award of the Arbitrator (15 January 2001), *United States - Section 110(5) of the US Copyright Act* [hereinafter "US - Copyright Act"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS160/12, paras. 33-34.

¹⁷⁹ Award of the Arbitrator (2 October 2009), *Colombia - Indicative Prices and Restrictions on Ports of Entry* [hereinafter "Colombia - Ports of Entry"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS366/13, para 90.

5. Factor 4 - Violation of Certain WTO Covered Agreements

Lastly, the relationship between length of RPT and effect from violation of certain WTO covered agreement(s) was analyzed. Over the years, more 'trade remedy' complaints were filed in WTO pursuant to the Anti-Dumping, Safeguards, and Subsidy and Countervailing Measures Agreements.¹⁸⁰ Majority of disputes, however, still dealt with violation of non-trade remedy agreements under both DSU Article 21.3(b) and DSU Article 21.3(c). The length of RPT was also longer for non-trade Remedy disputes under both DSU Article 21.3(b) and Article 21.3(c). Detailed analysis are shown in Table 20.

Table 20. Violation of Certain WTO Covered Agreements¹⁸¹

Agreement		Article 21.3(b)		Article 21.3(c)	
		# of Disputes	Average RPT	# of Disputes	Average RPT
Trade Remedy	Anti-Dumping	32 (64%)	8.31 months	6 (50%)	11.31 months
	Safeguard	6 (12%)	5.21 months	1 (8.3%)	14.00 months
	SCM	12 (24%)	9.85 months	5 (41.7%)	9.59 months
	TOTAL	51 (44.3%)	8.33 months	12 (28.3%)	10.82 months
Non-Trade Remedy	Accession	2	9.20 months	-	-
	Agriculture	5	10.93 months	2	13.05 months
	ATC	1	15.00 months	-	-
	Customs	1	12.50 months	1	8.50 months
	Enabling	-	-	1	14.37 months
	GATS	3	12.67 months	3	11.57 months
	GATT	35	10.68 months	15	11.84 months
	Licensing	1	8.27 months	-	-
	SPS	4	9.27 months	2	11.50 months
	TBT	4	12.50 months	1	10.00 months
	TRIMs	1	10.00 months	1	12.00 months
	TRIPS	5	11.27 months	3	9.33 months
	WTO	1	7.63 months	-	-
TOTAL	63 (56.7%)	10.84 months	29 (70.7%)	11.53 months	

¹⁸⁰ Leitner and Lester, "WTO Dispute Settlement 1995-2013 - A Statistical Analysis," 194.

¹⁸¹ Refer to <Appendix 13> for DSU Article 21.3(b) and <Appendix 14> for Article 21.3(c).

Before we discuss result from each trade remedy agreement, it is pertinent to note that reasonable time period for compliance for prohibited and actionable subsidies is not determined under DSU Article 21.3(c).¹⁸² Rather, the time period for compliance is determined by the panel in its report in cases of prohibited subsidies (ninety days, SCM Article 4.7), or already explicitly specified in the SCM Agreement in cases of actionable subsidies (six months, SCM Article 7.9).¹⁸³ Thus, those cases categorized as violating SCM Agreement are the ones that received two sets of RPT (*Indonesia - Autos* (DS54,55,59,64), *Canada - Autos* (DS139,142)): one set of RPT for violating SCM Agreement and another set of RPT for violating other certain WTO covered agreement and also for those in violation of other SCM Agreement's provisions specifically addressing following matters: i) satisfying certain substantive requirements to impose a countervailing measure, ii) procedural requirements regarding the conduct of a countervailing investigation, iii) imposition and maintenance in place of countervailing measures, and iv) those addressing non-actionable subsidies which another member believes results in serious adverse effects to its domestic industry¹⁸⁴.

Anti-Dumping Agreement was the most frequent trade-remedy agreement to be violated by the respondent in both Article 21.3(b) and 21.3(c). Observing the RPT of trade remedy disputes, disputes addressing violation of SCM Agreement received longer RPT than others under DSU Article 21.3(b), while a disputes dealing with violation of Safeguard Agreement received longer RPT than others under DSU Article 21.3(c). Moreover, disputes with violation of Safeguards Agreement received shorter RPT compared to others under DSU Article 21.3(b), while disputes with violation of SCM Agreement received

¹⁸² World Trade Organization, *WTO Analytical Index: DSU Article 21.3(b) Parties' Agreement after Appointment of Arbitrator*, para. 1099.

¹⁸³ *Ibid.*

¹⁸⁴ Indonesia received two sets of RPT awards, 12 months under DSU Article 21.3(c) and 6 months under SCM 7.9. Canada also received 8 months under DSU Article 21.3(c) and 90 days under SCM 4.7. For the purpose of this study, RPT awarded solely under DSU Article 21.3(c) were considered.

shorter RPT than others under DSU Article 21.3(c).

Overall, it is concluded that RPT from disputes covering violation of trade remedy agreements result in shorter RPT than those with violation of non-trade remedy agreements under both DSU Article 21.3(b) and Article 21.3(c), for violation of trade remedy agreements usually can be resolved via administrative means of implementation. Among 51 trade remedy disputes under Article 21.3(b), only 8 disputes¹⁸⁵ were found to be in need of legislative means of implementation (6 disputes addressing violation of Anti-Dumping Agreement and 2 disputes addressing violation of SCM Agreement¹⁸⁶), while 43 disputes¹⁸⁷ were in need of administrative means of implementation. The average RPT of those 8 disputes with legislative means of implementation was 10.52 months, while average RPT of 43 disputes with administrative means of implementation was 7.94 months.

Moreover, among 12 trade remedy disputes under Article 21.3(c), 6 disputes dealt with administrative means of implementation while 6 disputes involved legislative means of implementation. Even though equal number of disputes existed under each type of means of implementation, the average RPT was 12.4 months for those in need of legislative means of implementation and 9.66 months for those requiring administrative means of implementation. Thus, it appears that the length of RPT is not affected by which WTO covered agreement was found to be in violation, but rather affected by which means of implementation is necessary for compliance.

¹⁸⁵ *EC – Bed Linen* (DS141), *EC – Pipe Fittings* (DS219), *Mexico – Rice AD* (DS295), *US – Anti-Dumping and Countervailing Duties (China)* (DS379), *EC – Fasteners* (DS397), *EU – Footwear (China)* (DS405), *US – Carbon Steel (India)* (DS436), *US – Countervailing and Anti-Dumping Measures (China)* (DS449).

¹⁸⁶ *US – Carbon Steel* (DS436) and *US – Countervailing and Anti-Dumping Measures* (DS449).

¹⁸⁷ 11 disputes in violation of SCM Agreement, 6 disputes in violation of Safeguard Agreement, and 28 disputes in violation of Anti-Dumping Agreement.

6. Other Relevant Factors in Determining RPT

As briefly mentioned earlier, since no official report is filed in WTO for DSU Article 21.3(b), containing reasoning and rationale behind parties' agreement on specific period of RPT, it is difficult to observe what other factors would be considered by the parties to affect the length of RPT under DSU Article 21.3(b). Thus, the contents of this section will focus on other factors and principles that have been taken into account in previous disputes to determine RPT under Article 21.3(c).

Along with party's economic status as a developing country (Factor 1) and means of implementation (Factor 3), the use of time by respondent after adoption of panel (and Appellate Body) reports have been raised as a factor to consider. In *US - Copyright Act* (DS160), the arbitrator stated that when prompt compliance is required, timeline is of the essence, such that Members must make good use of time after adoption of the relevant dispute settlement reports to begin the implementation process.¹⁸⁸ The arbitrator sent out a cautionary warning that if it is perceived by an arbitrator that an implementing Member has not adequately begun implementation after adoption so as to effect prompt compliance, it is to be expected that the arbitrator will take into account in determining the reasonable period of time.¹⁸⁹ Moreover, even though it is very rare for the panel to invoke DSU Article 19.1¹⁹⁰, arbitrator from *US - Offset Act* (DS217,234) stated that reasonable period of time would be affected by such suggestion by the

¹⁸⁸ Award of the Arbitrator, *US - Copyright* (Article 21.3(c)), para. 46.

¹⁸⁹ *Ibid.*

¹⁹⁰ According to DSU Article 19.1, the panel may suggest ways in which the Member concerned could implement the recommendation. However, panel is not obliged to make such a suggestion, even when requested by the complainant(s). If the panel makes use of its right to suggest possible ways of implementation, such "suggestion" on how the respondent "could" put itself into compliance are not binding on the responding party. The responding party enjoys the freedom to choose any of the various options that may exist to bring about compliance. All the respondent is obliged to do is to make its measure(s) fully compatible with WTO law. (from WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 58).

panel.¹⁹¹ In addition, the arbitrator from *Canada - Pharmaceutical* (DS114) stated that the complexity of the proposed implementation can be a relevant factor.¹⁹² Furthermore, previous reasoning on particular circumstances stated by previous arbitrators,¹⁹³ flexibility of the legislative process,¹⁹⁴ legally binding nature of the component steps leading to implementation,¹⁹⁵ and role of the measures found to be inconsistent with WTO rules in a particular society¹⁹⁶ were each mentioned as factors to be considered in determining RPT.

Arbitrators from previous disputes have also commented on which factors are not considered in determining RPT under DSU Article 21.3(c). In *Indonesia - Autos* (DS54,55,59,64), the arbitrator found economic or political structural adjustment from withdrawal or modification of an inconsistent measure is not a particular circumstances that can be taken into account in determining the reasonable period of time under DSU Article 21.3(c), for it is an issue that any Member, whether developed or developing, faces whenever withdrawal or modification of a measure is necessary.¹⁹⁷ Moreover, in *Canada - Pharmaceuticals* (DS114), arbitrator stated that he was not convinced that the domestic "contentiousness" of a change should be a relevant factor in the reasonable period of time determination, for WTO disputes are always, to some extent, domestically contentious, as there otherwise would be no need for recourse to dispute settlement.¹⁹⁸

¹⁹¹ Award of the Arbitrator, *US - Offset Act* (Article 21.3(c)), paras. 51-52.

¹⁹² Award of the Arbitrator, *Canada - Pharmaceutical* (Article 21.3(c)), para. 51.

¹⁹³ Award of the Arbitrator, *Chile - Alcohol* (Article 21.3(c)), para 48.

¹⁹⁴ Award of the Arbitrator (28 February 2001), *Canada - Term of Patent Protection* [hereinafter "Canada - Patent Term"], Recourse to Arbitration under DSU Article 21.3(c), WT/DS170/10, paras. 63-64.

¹⁹⁵ *Ibid.*, para. 52.

¹⁹⁶ Award of the Arbitrator, *Chile - Agricultural Products* (Article 21.3(c)), para. 48.

¹⁹⁷ Award of the Arbitrator, *Indonesia - Autos* (Article 21.3(c)), para 23.

¹⁹⁸ Award of the Arbitrator, *Canada - Pharmaceuticals* (Article 21.3(c)), para. 60.

Interestingly, however, an exception was made in *Chile - Agricultural Product* (DS207), where arbitrator accepted to consider political contentiousness in determining RPT. Noting that simple contentiousness of implementation may not be a sufficient consideration under DSU Article 21.3(c) to justify a longer period of time, the arbitrator said Chile's Price Band System, which has been fundamentally integrated into policies of Chile, *plays unique role and impact on Chilean society* (emphasis added), thus is a relevant factor in determining reasonable period of time.¹⁹⁹ Furthermore, the arbitrator from *Canada - Patent Term* (DS170) explained that commercial harm is irrelevant to determination of RPT because such harm would exist in almost any case when there is a WTO inconsistent measure.²⁰⁰ The arbitrator of *US - Offset Act* (DS217,234) provided a good summary of factors and principles to be considered in determining the length of RPT as written below.²⁰¹

- The fifteen month period set forth in Article 21.3(c) is a "guideline" and does not represent "an average, or usual, period." Rather, "it is ultimately the relevant 'particular circumstances' that influence what is a 'reasonable period of time' for implementation."
- The term "reasonable" should be interpreted as including "the notions of flexibility and balance," in a manner which allows for account to be taken of the particular circumstances of each case, but must be read together with the term "prompt compliance" in Article 21.1.
- The reasonable period of time should be "the shortest period possible within the legal system of the Member to implement the recommendations and rulings of the DSB," on the basis of the "normal," rather than "extraordinary," legislative procedures of the implementing country.

¹⁹⁹ Award of the Arbitrator, *Chile - Agricultural Products* (Article 21.3(c)), paras. 47-48.

²⁰⁰ Award of the Arbitrator, *Canada - Patent Term* (Article 21.3(c)), paras. 46-48.

²⁰¹ Award of the Arbitrator, *US - Offset Act* (Article 21.3(c)), paras. 39-44.

- It is for the implementing Member to establish that the duration of the period it proposes constitutes the "shortest period possible" within its legal system; where the implementing Member fails to establish that this period is the shortest possible, the arbitrator must determine the "shortest period possible" on the basis of the evidence presented by all parties in their submissions, and taking into account the fifteen month guideline provided by Article 21.3(c).

VI. Conclusion

1. Summary of Results

In summary, both statistical analysis and case-based reasoning of previous WTO disputes under DSU Article 21.3(b) and DSU Article 21.3(c) have shown that economic status and development level of parties are relevantly more taken into consideration by the parties under DSU Article 21.3(b) compared to DSU Article 21.3(c). Moreover, even though providing special and differential treatment to developing countries and degree of such treatment may differ in each dispute, overall, arbitrators are consistent in applying very conservative interpretation of relationship between DSU Article 21.2 and Article 21.3(c). Thus, it was found that special attention to developing countries is not granted easily and consistently under the current dispute settlement system, especially when complainant is a developing country under DSU Article 21.3(c).

Regarding the second factor, it is concluded that protection level of product at issue of respondent and complainant country does not affect length of RPT under both DSU Article 21.3(b) and Article 21.3(c).

As for the third factor, it has been found that the duration of RPT for disputes requiring legislative means of implementation were much longer than those requiring administrative means of implementation. Furthermore, statistical analysis found that means of implementation is a critical factor to be taken in to account in determining RPT, under both DSU Article 21.3(b) and 21.3(c).

Last but not least, regarding relationship between the duration of RPT and effect from violation of certain WTO covered agreements, RPT from disputes addressing violation of trade remedy agreements turned out to be shorter than those covering violation of non-trade remedy agreements. However, it is difficult to say such difference is due to violation of different WTO covered agreement, but more due to the type of means of

implementation adopted for compliance, since most of those disputes dealing with violation of trade remedy agreements required administrative means of implementation to comply with the WTO law.

2. Implications : Suggestions for WTO Dispute Settlement Procedure

Even though the current dispute settlement procedure has accomplished significant improvement from that of GATT by establishing a single compulsory mechanism of dispute settlement for all WTO covered agreements, reverse-consensus rule for the establishment of panel and adoption of reports, and standing Appellate Body,²⁰² this study found that there are still some areas left for improvement within the current system.

2.1 Process of RPT Determination for Developing Countries

The very existence of a compulsory multilateral dispute settlement system is itself a particular benefit for developing countries and small Members, allowing all Members to have equal access in which decisions are made on the basis of rules rather than on the basis of economic power, empowering developing countries and smaller economies to stand on a more equal footing with developed and larger economies.²⁰³ Nevertheless, this study found that special attention or favorable treatment is not easily granted in practice in determining length of RPT especially under DSU Article 21.3(c) and in order to protect its interests as developing countries via receiving special attention or differential treatment under the current system, developing countries, first, have to overcome various obstacles, including lack of experts and financial infrastructure to initiate and to participate in

²⁰² David Evans and Celso de Tarso Pereira, "DSU Review : A View from the Inside," in *Key Issues in WTO Dispute Settlement : The First Ten Years*, ed. Rufus Yerxa and Bruce Wilson (New York: Cambridge University Press, 2005), 252.

²⁰³ WTO Secretariat, *A Handbook on the WTO Dispute Settlement System*, 109.

litigation within international organization. In addition to these burdens, developing countries face another burden under DSU Article 21.3(c).

The arbitrators imposed that in order to receive special attention or treatment as a developing Member, the party itself shall provide supporting evidence and explanation exhibiting how their interest as developing country would be negatively affected due to short or long reasonable period of time. Unfortunately, however, arbitrators have never been clear on how much and of what additional information developing countries needs to submit to receive special attention or treatment in determining RPT. Thus, in order to establish a reliable and secure dispute settlement system, it would be helpful if arbitrators would provide lucid guideline on what additional information or further elaboration is needed from developing countries. Furthermore, in order to prevent abuse of special treatment via favorable duration of reasonable period of time by developing countries, it is pertinent for dispute settlement system to establish clear guidelines and standard on defining which countries would be qualified as developing countries, when favorable treatment would be granted to these countries, and also define exactly how such factor would be reflected in determining duration of RPT.

2.2 Arbitrator's Mandate

It has been found that the arbitrator's sole task is to determine the reasonable period of time for implementation and that it is not within arbitrators mandate to determine the ways and means of implementation, which is left to the discretion of the implementing Member. However, in order to balance the needs of implementing and complaining party in relation to RPT, it is still pertinent for arbitrators to have more information and understanding regarding potential implementing measures available for the respondent. Thus, even though choosing ways and means of

implementation shall remain as discretion for the respondent, i) establishment of additional process within current dispute settlement system, guaranteeing information sessions for arbitrator to hear more about the possible implementing measures with sufficient and realistic time frame for them to review, or ii) refining arbitrator's mandate to have right to request for more information on compliance measures available to respondent, or even possibly iii) allowing arbitrator to provide non-binding suggestions on ways and means of implementation could be possible options to improve reliability of current dispute settlement system.

2.3 Ambiguous Reasonable Period of Time

Even though arbitrators provide explanation on how they have determined the duration of final RPT in Award of the Arbitrator reports, it is still not clear how much of what factor and standard were actually considered in calculating certain length of RPT. Such silence may have been convenient for the arbitrator, allowing him to avoid debates regarding whether he attached either too much or too little importance to the specific factor.²⁰⁴ However, such aspect has left RPT to be ambiguous, subjective, and untransparent, thus drifting away from DSU's purpose of securing objectivity and predictability within the dispute settlement system. By allowing Member countries to be aware of what arbitrators have considered for "particular circumstances" in previous disputes to determine the length of RPT, parties can expect something more than mere speculation regarding RPT. Thus, improving the contents of be included in Award of the Arbitrator report would significantly help Members to learn lessons regarding RPT from previous arbitrations.

²⁰⁴ Alvarez-Jimenez, "A Reasonable Period of Time for Dispute Settlement Implementation: An Operative Interpretation for Developing Country Complainants," 460.

2.4 Defining the "Impracticality"

As briefly mentioned in Section III on overview of DSU Article 21.3, RPT for implementation is not available unconditionally to an implementing Member.²⁰⁵ Rather, an implementing Member is entitled to a RPT only when "it is impracticable to comply immediately with the recommendation and ruling of the DSB."²⁰⁶ However, the legal text of DSU Article 21.3 does not provide clear guideline on how to judge certain circumstances to be *impracticable* (emphasis added) for the losing party to immediately comply to the recommendation and ruling of the DSB, i.e., leave such judgment to arbitrator's discretion. In other words, the current system leaves a room for losing party to simply state that it needs a RPT to comply in order to avoid immediate compliance due to impracticality.²⁰⁷ Since such openness of DSU may permit application of subjective and ambiguous standard to determine impracticality of circumstances that losing party is facing, thus resulting in unpredictable and unstable conferment of RPT, it is pertinent to establish specific guidelines on which circumstances would be considered as impracticable for immediate compliance by the losing party.

2.5 Burden of Complainant

Interestingly, under the current dispute settlement system, the complaining party must initiate and engage in the procedural stages available under the DSU to bring about the implementation of the report.²⁰⁸ Basically, even though complainant wins the dispute against an implementing party

²⁰⁵ Award of the Arbitrator, *US - Offset Act* (Article 21.3(c)), para. 40.

²⁰⁶ DSU, Article 21.3.

²⁰⁷ Gambardella and Rovetta, "Reasonable Period of Time to Comply with WTO Rulings: Need to Do More for Developing Countries?," 101.

²⁰⁸ Brendan McGivern, "Implementation of Panel and Appellate Body Rulings : An Overview," in *Key Issues in WTO Dispute Settlement : The First Ten Years*, ed. Rufus Yerxa and Bruce Wilson (New York: Cambridge University Press, 2005), 100.

who have violated WTO provisions, complainant has to bear significant amount of burden in order to receive compensation from its counterpart for damaging complainant country's benefits or interests. For instance, if parties of dispute cannot reach an agreement on RPT under DSU Article 21.3(b), both complainant and respondent have to go through DSU Article 21.3(c). If respondent fails to undertake any implementation, complainant has to initiate recourse of dispute settlement procedure under DSU Article 21.5. If WTO inconsistent measure continues to exist even after recourse under DSU Article 21.5, the complainant may ask for compensation or retaliate under DSU Article 22.6.²⁰⁹

On the other hand, unlike the complainant, surprisingly few interim requirements are imposed upon losing member between the time when the losing member must inform the DSB of its intentions in respect of implementation of the recommendation and rulings of the DSB and the time the member's reasonable period expires many months later.²¹⁰ The member is not required to identify the measures it will seek to remove or implement, nor is it required to specify any sort of implementation schedule or even consult with a winning party who may be concerned about whether the implementation period is being used in good faith.²¹¹ The only intervening obligation of the losing members is that it provide a "status report" at regular intervals, beginning six months into the reasonable period, which can be as specific or vague as the losing member elects to make it.²¹²

Overall, the current dispute settlement system appears to be extremely odd, since the winning party has to bear most of the burden to seek for solution in every step of the way, while the losing party as the actual violator of WTO provision does not have to bear any punitive actions or

²⁰⁹ Ibid., pg. 106.

²¹⁰ Gleason and Walther, "The WTO Dispute Settlement Implementation Procedures: A System in need of Reform," 719.

²¹¹ Ibid.

²¹² Ibid.

burdens from initiating complicated procedures. Therefore, it would be necessary to restructure the overall dispute settlement process to reduce the amount of burden beared by the complainant, while imposing procedural requirements to losing party by mandating communication with the winning party on regular basis or requiring losing party to specifically list every action they have engaged for implementation in status reports.

Even though current dispute settlement has achieved significant improvements compared to previous GATT dispute settlement by establishing rule oriented system with detailed procedure and time frame in every step of the way, a lot of work could be done to improve the current system which provides transparent guideline for the WTO Members' to achieve prompt compliance, moving closer to trade liberalization. Thus, Members shall continue to raise their voice via various communication channels available, including the on going Review Negotiations on how to improve and clarify implementation provision and procedures within the WTO dispute settlement system.

3. Limitations and Suggestions for Future Study

Despite its achievements, there were some limitations in this study. First of all, regarding analysis on Factor 1, which investigated the relationship between duration of RPT and economic status of disputants, the current result might have been skewed due to higher participation rate of developed countries in WTO dispute settlement system than developing countries, offering overwhelmingly more data available for developed countries. Thus, different result may come out once developing countries become more active within the current dispute settlement system.

For Factor 2, each product at issue of a dispute received either 4-digit or 6-digit HS Code, indicating the statistical result may contain minor errors

due to adopting two different digits in finding HS Code. Since tariff rate was also found based on the HS Code, minor statistical gap could also exist in tariff rate.

Moreover, this study did not observe effect on RPT from multiple factors combined together. This study only focused on one-on-one relationship between a single factor with duration of a single set of RPT. However, since arbitrators consider multiple factors together in determining RPT in practice, future studies could focus on analyzing effect from multiple factors on duration of RPT, reflecting the reality of RPT determination.

4. Significance of this Study

This study upholds significant value as a research on RPT for five reasons. First, as the first study to apply statistical method of correlation and regression analysis on RPT from both DSU Article 21.3(b) and Article 21.3(c), this study generated a meaningful database on 81 disputes under DSU Article 21.3(b) and 27 disputes under Article 21.3(c). Creating a database with GNI/capita of respondent and complainant, HS Code for product at issue, MFN tariff rate for those products, and other variables for each dispute and utilizing these wide range of data was a challenging but meaningful task.

Secondly, this study raised two additional factors that have not been discussed in the previous literatures nor Award of the Arbitrator report: protection level of product at issue measured in tariff rate and effect from violation of certain WTO covered agreement(s) on duration of RPT. Since these two factors were found to have no relationship with duration of RPT, such result implies that these two factors can be added to the list of factors that are rejected by the arbitrators to be considered in determining RPT,

including structural adjustment, commercial harm, and political contentiousness.

Moreover, statistical analysis in this study found some significant patterns in determining RPT under DSU Article 21.3(b) and Article 21.3(c). Since most of the arbitrators have adopted or re-interpreted what has been established in previous Award of the Arbitrator reports, Members could gain meaningful information on determining RPT. For instance, one of the analysis of this research found that RPT from disputes challenged by a developing complaining party against developed implementing party would be shorter under DSU Article 21.3(b) than Article 21.3(c), indicating that it is more efficient to reach agreement with its counterpart on determining RPT, rather than exhausting precious time on finalizing RPT and end up receiving long RPT by the Arbitrator under DSU Article 21.3(c), which would only extend the period of WTO inconsistent measure to be in place. Thus, the result of this study would be useful for Members of WTO involved in trade disputes.

Furthermore, this study also pointed out potential areas to be improved within the current dispute settlement system, which would be helpful for current system to accomplish its objective of providing security and predictability in multilateral trading system.

Last but not least, it is pertinent to note that the very existence of dispute settlement system and having an international organization like WTO to enforce rules and provisions in multilateral trading system would be meaningless if proper and prompt compliance mechanism is not established. Thus, more studies shall be conducted not only on reasonable time period for implementation, but also on overall compliance and implementation issue within the current system as a whole.

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- The United States Federal Register Vol. 64 pg. 73126~73131 (29 December
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Flat Products From India and Indonesia.
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Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp
From the People’s Republic of China.
- The United States Federal Register Vol. 70 pg. 6728 (8 February 2005).
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Review Investigations; Certain Frozen Warmwater Shrimp from India and
Thailand.
- The United States Federal Register Vol. 71, pg. 29310 (22 May 2006).
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the Republic of Korea.

**Appendix 1. Text from Understanding on Rules and Procedures Governing
the Settlement of Disputes
: Key Provisions**

Article 3. General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

Article 19. Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned²¹³ bring the measure into conformity with that agreement.²¹⁴ In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 21. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

2. 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.

²¹³ The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

²¹⁴ With respect to recommendations in cases not involving a violation of GATT 1994 or any other covered agreement, see Article 26.

3. At a DSB meeting held within 30 days²¹⁵ after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. 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. The reasonable period of time shall be:

- (a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,
- (b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,
- (c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.²¹⁶ In such arbitration, a guideline for the arbitrator²¹⁷ 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.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15 - month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

²¹⁵ If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

²¹⁶ If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director General within ten days, after consulting the parties.

²¹⁷ The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

**Appendix 2. Text from Understanding on Rules and Procedures Governing
the Settlement of Disputes
: On Special Attention for Developing Countries**

Article 3. General Provisions

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time - frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time - frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

Article 4. Consultations

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

Article 8. Composition of Panels

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

Article 12. Panel Procedures

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more - favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

Article 21. Surveillance of Implementation of Recommendations and Rulings

2. 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.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 24. Special Procedures Involving Least - Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least - developed country Member, particular consideration shall be given to the special situation of least - developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least - developed country Member. If nullification or impairment is found to result from a measure taken by a least - developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least - developed country Member, where a satisfactory solution has not been found in the course of consultations the Director - General or the Chairman of the DSB shall, upon request by a least - developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director - General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 27. Responsibilities of the Secretariat

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

Appendix 3. Reasonable Period of Time under DSU Article 21.3(b)

	DS#	Decision	Agreed RPT
1	2	U.S. - Gasoline	15 months
2	31	Canada - Periodicals	15 months
3	34	Turkey - Textiles	15 months
4	50	India - Patents (U.S.)	15 months
5	56	Argentina - Textiles	242 days
6	58	U.S. - Shrimp	13 months
7	69	EC - Poultry	8 months, 8 days
8	76	Japan - Agricultural Products II	9 months, 12 days
9	79	India - Patents (EC)	6 months, 27 days
10	90	India - QRs	18 months, 8 days
11	98	Korea - Dairy	4 months, 8 days
12	99	U.S. - DRAMS	8 months
13	103, 113	Canada - Dairy	14 months, 4 days
14	122	Thailand - H-Beams	6 months, 15 days
15	132	Mexico - Corn Syrup	6 months, 27 days
16	141	EC - Bed Linen	5 months, 2 days
17	146, 175	India - Autos	5 months
18	161, 169	Korea - Beef	8 months
19	166	U.S. - Wheat Gluten Safeguards	4 months, 14 days
20	174, 290	EC - Trademarks / Gis	11 months, 2 weeks
21	176	U.S. - Section 211("Havana Club")	11 months
22	177, 178	U.S. - Lamb Safeguards	6 months
23	179	U.S. - Sheet/Plate from Korea	7 months
24	189	Argentina - Floor Tiles	5 months
25	202	U.S. - Line Pipe Safeguards	5 months, 23 days
26	204	Mexico - Telecoms	13 months
27	206	U.S. - India Steel Plate	5 months
28	211	Egypt - Rebar	9 months
29	212	U.S. - CVDs on EC Products	10 months
30	219	EC - Pipe Fittings	7 months
31	231	EC - Sardines	6 months
32	238	Argentina - Peach Safeguards	8 months, 15 days
33	245	Japan - Apples	6 months, 20 days
34	257	U.S. - Lumber CVDs Final ("Lumber IV")	10 months

37	277	U.S. - Lumber ITC Investigation ("Lumber VI")	9 months
38	282	U.S. - OCTG AD Measures	6 months
39	291,292,293	EC - Biotech Products ("GMOs")	12 months
40	294	U.S. - "Zeroing" of Dumping Margins	11 months
41	295	Mexico - Rice AD Measures ²¹⁸	12 months/8 months
42	296	U.S. - DRAMS CVD Investigation	7 months, 16 days
43	299	EC - DRAMS Countervailing Measures	8 months
44	302	Dominican Republic - Cigarettes	24 months
45	308	Mexico - Taxes on Soft Drinks ²¹⁹	9 months, 8 days 10 months, 7 days
46	312	Korea - Paper AD Duties	8 months
47	322	U.S. - "Zeroing" (Japan)	11 months
48	331	Mexico - Steel Pipes and Tubes	6 months
59	334	Turkey - Rice	6 months
50	335	U.S. - Shrimp AD Measure (Ecuador)	6 months
51	337	EC - Salmon AD Measure	10 months
52	339,340,342	China - Auto Parts	7 months, 20 days
53	343	U.S. - Shrimp (Thailand)	8 months
54	345	U.S. - Customs Bond Directive	8 months
55	350	U.S. - Continued Zeroing	10 months
56	362	China - IP Rights	12 months
57	363	China - Publications and Audiovisual Products	14 months
58	367	Australia - Apples	9 months
59	371	Thailand - Cigarettes (Philippines) ²²⁰	10 months/15months
60	375,376,377	EC - IT Products	9 months, 9 days
61	379	U.S. - AD & CVD (China)	11 months
62	381	U.S. - Tuna II (Mexico)	13 months
63	382	U.S. - Orange Juice (Brazil)	9 months
64	383	U.S. - AD on Carrier Bags	6 months
65	397	EC - Fasteners	14 months, 2 weeks
66	394,395,398	China - Raw Materials	10 months, 9 days
67	396, 403	Philippines - Distilled Spirits	13 months, 16 days
68	400, 401	EC - Seal Products	16 months
69	402	U.S. - Zeroing (Korea) ²²¹	8 months/ 9 months
70	404	U.S. - Shrimp (Viet Nam)	10 months

74	413	China - Electronic Payment	11 months
75	415, 416 417, 418	Dominican Republic - Bag & Fabric Safeguards	2 months, 1 week
76	422	U.S. - Shrimp and Sawblades	8 months
77	425	China - X-Ray Equipment	9 months, 25 days
78	427	China - Broiler Products	9 months, 14 days
79	431,432,433	China - Rare Earths	8 months, 3 days
80	436	U.S. - Carbon Steel (India)	15 months
81	449	U.S. - CVD & AD (China)	12 months

²¹⁸ With respect to the DSB's recommendations and rulings regarding paragraphs 8.1 and 8.3 of the Panel Report (WT/DS295/R) and paragraph 350(b) and (c) of the Appellate Body Report (WT/DS295/AB/R), the reasonable period of time shall be 8 months, expiring on 20 August 2006. With respect to the DSB's recommendations and rulings regarding paragraph 8.5 of the Panel Report (WT/DS295/R), and paragraph 350(d) of the Appellate Body Report (WT/DS295/AB/R), the reasonable period of time shall be 12 months, expiring on 20 December 2006. (*Agreement under Article 21.3(b) of the DSU* WT/DS295/12 (24 May 2006)).

²¹⁹ On 3 July 2006, Mexico and the United States informed the DSB that they had mutually agreed that the reasonable period of time for Mexico to comply with the DSB recommendations and rulings shall be nine months and eight days, expiring on 1 January 2007. However, if the Mexican Congress enacts legislation between 1 December and 31 December 2006, the reasonable period of time shall be ten months and seven days, expiring on 31 January 2007.

²²⁰ With respect to the DSB's recommendation and rulings regarding paragraphs 8.3(b) and (c) of the panel report, the reasonable period of time to comply shall be 15 months, expiring on 15 October 2012. With respect to the DSB's recommendation and rulings regarding all other measures, the reasonable period of time to comply shall be 10 months, expiring on 15 May 2012.

²²¹ With respect to the calculation of certain margins of dumping in the Diamond Sawblades and Parts Thereof, the reasonable period of time shall be 8 months, expiring on 24 October 2011. With respect to the calculation of certain margins of dumping in the Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip in Coils investigations, the reasonable period of time shall be 9 months, expiring on 24 November 2011. (*Agreement under Article 21.3(b) of the DSU* (WT/DS402/6)).

Appendix 4. RPT & Number of Disputes Participated by the Respondent and Complainant under DSU Article 21.3(b)

Respondent			Complainant		
Country	# of Disputes	Avg. RPT	Country	# of Disputes	Avg. RPT
Argentina	3	7.19	Argentina	1	12.00
Australia	1	9.00	Australia	2	7.00
Canada	4	12.24	Brazil	3	8.09
China	8	9.61	Canada	6	10.36
Dominican Republic	2	6.59	Chile	1	10.18
EC	12	10.22	China	6	10.18
Egypt	1	9.00	Chinese Taipei	1	9.30
India	4	10.03	Costa Rica	1	2.33
Japan	2	8.03	EC	15	8.57
Korea	3	7.07	Ecuador	1	6.00
Mexico	5	9.34	El Salvador	1	2.23
Philippines	1	13.53	Guatemala	2	4.12
Thailand	2	8.25	Honduras	2	13.12
Turkey	2	10.50	India	6	10.18
US	31	9.41	Indonesia	2	11.50
			Japan	4	9.60
			Korea	7	7.61
			Malaysia	1	13.00
			Mexico	3	9.77
			New Zealand	3	9.71
			Norway	2	13.00
			Pakistan	1	13.00
			Peru	1	6.00
			Philippines	1	10.00
			Poland	1	6.50
			Thailand	3	9.00
			Turkey	1	9.00
			US	28	10.50
			Venezuela	1	15.00

Appendix 5. Reasonable Period of Time under DSU Article 21.3(c)

	DS#	Decision	Proposed RPT (Respondent)	Proposed RPT (Complainant)	Agreed RPT
1	8, 10, 11	Japan-Alcohol	23 months	15 months / 5 months	15 months
2	18	Australia-Salmon	15 months	Less than 15 months	8 months
3	26, 48	EC-Hormones	39 months	10 months	15 months
4	27	EC-Bananas	15 months, 1 week	9 months	15 months, 1 week
5	54,55,59,64	Indonesia-Autos ²²²	15 months	6 months/1 months	12 months/6 months
6	75, 84	Korea-Alcohol	15 months	6 months	11 months, 2 weeks
7	87, 110	Chile-Alcohol	18 months	8 months 9 days	14 months, 9 days
8	114	Canada-Pharmaceuticals	11 months	Less than 12 months	6 months
9	139, 142	Canada-Autos ²²³	11 months, 12 days	90 days	90 days / 8 months
10	136, 162	U.S.-1916 Act	15 months	6 months 10 days / 6 months	10 months
11	155	Argentina-Bovine Hides	46 months, 15 days	8 months	12 months, 12 days
12	160	U.S.-Copyright Act	15 months	10 months	12 months
13	170	Canada-Patent Term	14 months 2 days	6 months	10 months
14	184	U.S. - Hot-Rolled Steel from Japan	18 months	10 months	15 months
15	207	Chile - Agricultural Products	18 months	9 months 6 days	14 months
16	217, 234	U.S. - Offset Act ("Byrd Amendment")	15 months	6 months	11 months

17	246	EC - Tariff Preferences	20 months 10 days	6 months 2 weeks	14 months 11 days
18	265,266,283	EC - Sugar Subsidies	19 months 12 days	6 months 6 days	12 months 3 days
19	268	U.S. - OCTG Sunset Reviews	15 months	7 months	12 months
20	269, 286	EC - Chicken Cuts	26 months	5 months 10 days / 6 months	9 months
21	285	U.S. - Gambling Services	15 months	6 months 1 months	11 months 2 weeks
22	332	Brazil - Tyres	21 months	10 months	12 months
23	336	Japan - DRAMS CVDs	15 months	5 months	8 months 2 weeks
24	344	U.S. - Mexican Stainless Steel AD Measures	15 months	7 months	11 months 10 days
25	366	Colombia - Ports of Entry	15 months	4 months 19 days	8 months 15 days
26	384, 386	U.S. - COOL	18 months	6 months / 8 months	10 months
27	414	China - GOES	19 months	4 months 1 week	8 months, 15 days

²²² Indonesia received two set of RPT : 1) 12 months under DSU Article 21.3(c) and 2) 6 months under SCM Article 7.9 (Indonesia – Autos Report of the Panel Paras. 15.1 – 15.4)

²²³ Canada received two sets of RPT : 1) 10 months under DSU Article 21.3(c) and 2) 90 days under SCM Article 4.7 (Canada – Autos Report of the Panel Paras. 7.258 – 7.260 ; 11.4 – 11.7)

**Appendix 6. RPT & Number of Disputes Participated by the Respondent
and Complainant under DSU Article 21.3(c)**

Respondent			Complainant		
Country	# of Disputes	Avg. RPT	Country	# of Disputes	Avg. RPT
Argentina	1	12.40	Antigua and Barbuda	1	11.47
Australia	1	8.00	Argentina	2	13.00
Brazil	1	12.00	Australia	2	11.55
Canada	3	8.00	Brazil	3	10.70
Chile	2	14.15	Canada	5	11.80
China	1	8.50	Chile	1	11.00
Colombia	1	8.50	EC	11	11.29
EC	5	13.14	Ecuador	1	15.23
Indonesia	1	12.00	Guatemala	1	15.23
Japan	2	11.73	Honduras	1	15.23
Korea	1	11.47	India	2	12.68
US	8	11.60	Indonesia	1	11.00
			Japan	5	11.20
			Korea	2	9.73
			Mexico	4	11.89
			Panama	1	8.50
			Thailand	3	10.70
			US	7	12.46

Appendix 7. Economic Status of Respondent and Complainant with RPT : Article 21.3(b)

DS #	Decision	Respondent			Complainant			Agreed RPT
		Country	Economic Status	Average GNI per Capita (CurrentUS\$)	Country	Economic Status	Average GNI per Capita (CurrentUS\$)	
2	U.S. - Gasoline	US	Developed	30506.67	Venezuela	Developing	3086.67	15 months
31	Canada - Periodicals	Canada	Developed	20843.33	US	Developed	31323.33	15 months
34	Turkey - Textiles	Turkey	Developing	3710	India	Developing	443.33	15 months
50	India - Patents (U.S.)	India	Developing	430	US	Developed	32346.67	15 months
56	Argentina - Textiles	Argentina	Developing	7910	US	Developed	32346.67	242 days
58	U.S. - Shrimp	US	Developed	32346.67	India	Developing	430	13 months
					Malaysia	Developing	3840	
					Pakistan	Developing	460	
					Thailand	Developing	2256.67	
69	EC - Poultry	EC	Developed	19701.32	Brazil	Developing	4683.33	8 months 8 days
76	Japan - Agricultural Products II	Japan	Developed	33760	US	Developed	33783.33	9 months 12 days
79	India - Patents (EC)	India	Developing	430	EC	Developed	19701.32	6 months 27 days
90	India - QRs	India	Developing	443.33	US	Developed	33783.33	18 months 8 days
98	Korea - Dairy	Korea	Developing	10846.67	EC	Developed	19278.80	4 months 8 days
99	U.S. - DRAMS	US	Developed	33783.33	Korea	Developing	10343.33	8 months
103	Canada - Dairy	Canada	Developed	21513.33	US	Developed	33783.33	14 months 4 days
113					New Zealand	Developed	14826.67	
122	Thailand - H-Beams	Thailand	Developing	1920	Poland	Developing	4786.67	6 months 15 days
132	Mexico - Corn Syrup	Mexico	Developing	5633.33	US	Developed	35286.67	6 months 27 days

141	EC - Bed Linen	EC	Developed	19007.96	India	Developing	466.67	5 months 2 days
146	India - Autos	India	Developing	490	EC	Developed	19512.16	5 months
175					US	Developed	37856.67	
161	Korea - Beef	Korea	Developed	11616.67	US	Developed	36470	8 months
169					Australia	Developed	20393.33	
166	U.S. - Wheat Gluten Safeguards	US	Developed	36470	EC	Developed	19007.96	4 months 14 days
174 290	EC - Trademarks/Gis	EC	Developed	28658.22	US	Developed	45736.67	11 months 2 weeks
176	U.S. - Section 211	US	Developed	37856.67	EC	Developed	19152.16	11 months
177	U.S. - Lamb Safeguards	US	Developed	36470	New Zealand	Developed	13853.33	6 months
178					Australia	Developed	20393.33	
179	U.S. - Sheet/Plate from Korea	US	Developed	36470	Korea	Developed	11616.67	7 months
189	Argentina - Floor Tiles	Argentina	Developing	6173.33	EC	Developed	19007.97	5 months
202	U.S. - Line Pipe Safeguards	US	Developed	37856.67	Korea	Developed	12486.67	5 months 23 days
204	Mexico - Telecoms	Mexico	Developing	7250	US	Developed	43256.67	13 months
206	U.S. - India Steel Plate	US	Developed	37856.67	India	Developing	490	5 months
211	Egypt - Rebar	Egypt	Developing	1416.67	Turkey	Developing	3586.67	9 months
212	U.S. - CVDs on EC Products	US	Developed	40256.67	EC	Developed	21712.39	10 months
219	EC - Pipe Fittings	EC	Developed	21712.39	Brazil	Developing	3103.33	7 months
231	EC - Sardines	EC	Developed	19512.16	Peru	Developing	1973.33	6 months
238	Argentina - Peach Safeguards	Argentina	Developing	4375	Chile	Developing	4783.33	8 months 15 days

245	Japan - Apples	Japan	Developed	34970	US	Developed	40256.67	6 months 20 days
257	U.S. - Lumber CVDs Final ("Lumber IV")	US	Developed	43256.67	Canada	Developed	29460	10 months
264	U.S. - Final Lumber AD Determination ("Lumber V")	US	Developed	43256.67	Canada	Developed	29460	7 months, 15 days
276	Canada - Wheat	Canada	Developed	29460	US	Developed	43256.67	10 months 5 days
277	U.S. - Lumber ITC Investigation ("Lumber VI")	US	Developed	43256.67	Canada	Developed	29460	9 months
282	U.S. - OCTG	US	Developed	45736.67	Mexico	Developing	7733.33	6 months
291	EC - Biotech Products ("GMOs")	EC	Developed	31316.99	US	Developed	47416.67	12 months
292					Canada	Developed	37596.67	
293					Argentina	Developing	5855	
294	U.S. - "Zeroing" of Dumping Margins (EC)	US	Developed	47416.67	EC	Developed	31316.99	11 months
295	Mexico - Rice AD Measures	Mexico	Developing	7733.33	US	Developed	45736.67	12 months / 8months
296	U.S. - DRAMS CVD Investigation	US	Developed	45736.67	Korea	Developed	17810	7 months 16 days
299	EC - DRAMS Countervailing Measures	EC	Developed	28658.22	Korea	Developed	17810	8 months
302	Dominican Republic - Cigarettes	Dominican Republic	Developing	2923.33	Honduras	Developing	1376.67	24 months
308	Mexico - Taxes on Soft Drinks	Mexico	Developing	7733.33	US	Developed	45736.67	10 months 7 days 9 months 8 days
312	Korea - Paper AD Duties	Korea	Developed	17810	Indonesia	Developing	1236.67	8 months
322	U.S. - "Zeroing" (Japan)	US	Developed	48570	Japan	Developed	38043.33	11 months
331	Mexico - Steel Pipes and Tubes	Mexico	Developing	8810	Guatemala	Developing	2436.67	6 months

334	Turkey - Rice	Turkey	Developing	8453.33	US	Developed	48570	6 months
335	U.S. - Shrimp AD Measures	US	Developed	48570	Ecuador	Developing	3426.67	6 months
337	EC - Salmon AD Measures	EC	Developed	34929.55	Norway	Developed	82886.67	10 months
339	China - Auto Parts	China	Developing	3633.33	EC	Developed	35563.01	7 months 20 days
340					US	Developed	49030	
342					Canada	Developed	44053.33	
343	U.S. - Shrimp (Thailand)	US	Developed	48890	Thailand	Developing	3630	8 months
345	U.S. - Customs Bond Directive	US	Developed	48890	India	Developing	1060	8 months
350	U.S. - Continued Zeroing	US	Developed	49030	EC	Developed	35563.01	10 months
362	China - IP Rights	China	Developing	3633.33	US	Developed	49030	12 months
363	China - Publications and Audiovisual Products	China	Developing	4250	US	Developed	49253.33	14 months
367	Australia - Apples	Australia	Developed	46850	New Zealand	Developed	29886.67	9 months
371	Thailand - Cigarettes (Philippines)	Thailand	Developing	4730	Philippines	Developing	2773.33	10 months / 15 months
375	EC - IT Products	EC	Developed	35448.21	US	Developed	49253.33	9 months 9 days
376					Japan	Developed	41663.33	
377					Chinese Taipei	Developed	21620	
379	U.S. - Anti-Dumping and Countervailing Duties (China)	US	Developed	50460	China	Developing	4956.67	11 months

381	U.S. - Tuna II (Mexico)	US	Developed	51913.33	China	Developing	9553.33	13 months
382	U.S. - Orange Juice (Brazil)	US	Developed	50460	Mexico	Developing	10620	9 months
383	U.S. - AD Measures on Carrier Bags	US	Developed	49253.33	Brazil	Developing	4266.67	6 months
397	EC - Fasteners	US	Developed	35380.14	Thailand	Developing	4956.67	14 months 2weeks
394	China - Raw Materials	China	Developing	5730	US	Developed	51913.33	10 months 9 days
395					EC	Developed	35449.01	
398					Mexico	Developing	9553.33	
396	Philippines - Distilled Spirits	Philippines	Developing	2773.33	EC	Developed	35380.14	13 months 16 days
403					US	Developed	50460	
400	EC - Seal Products	EC	Developed	35025.65	Canada	Developed	51388.60	16 months
401					Norway	Developed	100952.4	
402	U.S. - Zeroing (Korea)	US	Developed	50460	Korea	Developed	22860	8 months/9months
404	U.S. - Shrimp (Vietnam)	US	Developed	50460	Vietnam	Developing	1406.67	10 months
405	EU - Footwear (China)	EU	Developed	35449.01	China	Developing	5730	7 months 19 days
406	U.S. - Clove Cigarettes	US	Developed	51913.33	Indonesia	Developing	3306.67	15 months
412	Canada - Renewable Energy (Canada - Feed-In Tariff Program)	Canada	Developed	51142.40	Japan	Developed	43899.86	10 months
426					EC	Developed	35088.11	
413	China - Electronic Payment Services	China	Developing	5730	US	Developed	51913.33	11 months
415	Dominican Republic - Bag and Fabric Safeguards	Dominican Republic	Developing	5553.33	Costa Rica	Developing	8716.67	2 months 1 week
416					Guatemala	Developing	3123.33	
417					Honduras	Developing	2123.33	
418					El Salvador	Developing	3603.33	

422	U.S. - Shrimp and Sawblades	US	Developed	51913.33	China	Developing	5730	8 months
425	China - X-Ray Equipment	US	Developing	6620.79	China	Developed	35088.11	9 months 25 days
427	China - Broiler Products	China	Developing	6620.79	EC	Developed	53356.06	9 months 14 days
431	China - Rare Earths	China	Developing	7066.18	US	Developed	54074.08	8 months 3 days
432					EU	Developed	35025.65	
433					Japan	Developed	41394.79	
436	U.S. - Carbon Steel (India)	China	Developed	54074.08	India	Developing	1597.82	15 months
449	U.S. - Countervailing and AD Measure	US	Developed	54074.08	China	Developing	7066.18	12 months

Appendix 8. Economic Status of Respondent and Complainant with RPT : Article 21.3(c)

DS#	Decision	Respondent			Complainant			Awarded RPT
		Country	Economic Status	Average GNI per Capita (CurrentUS\$)	Country	Economic Status	Average GNI per Capita (CurrentUS\$)	
8	Japan - Alcohol	Japan	Developed	40840.00	EC	Developed	19550.48	15 months
10					Canada	Developed	20813.33	
11					US	Developed	30506.67	
27	EC - Bananas	EC	Developed	19832.70	Ecuador	Developing	2170.00	15 months 1 week
					Guatemala	Developing	1583.33	
					Honduras	Developing	710.00	
					Mexico	Developing	4370.00	
26	EC - Hormones	EC	Developed	19701.32	US	Developed	32346.67	15 months
48					Canada	Developed	21046.67	
54	Indonesia - Autos	Indonesia	Developing	786.67	EC	Developed	19701.32	12 months (DSU21.3(c)) / 6 months (SCM 7.9)
55					Japan	Developed	35176.67	
64					US	Developed	32346.67	
59								
18	Australia - Salmon	Australia	Developed	21720.00	Canada	Developed	21046.67	8 months
75	Korea - Alcohol	Korea	Developing	10343.33	EC	Developed	19510.61	11 months 2weeks
84					US	Developed	33783.33	
87	Chile - Alcohol	Chile	Developing	4863.33	EC	Developed	19278.80	14 months 9 days
110								

114	Canada - Pharmaceuticals	Canada	Developed	22216.67	EC	Developed	19278.80	6 months
139	Canada - Autos	Canada	Developed	22216.67	Japan	Developed	34466.67	8 months (DSU 21.3(c)) / 90 days (SCM 4.7)
142					EC	Developed	19278.80	
160	U.S. - Copyright Act	US	Developed	35286.67	EC	Developed	19278.80	12 months
136	U.S. - 1916 Act	US	Developed	35286.67	EC	Developed	19278.80	10 months
162					Japan	Developed	34466.67	
170	Canada - Patent Term	Canada	Developed	22216.67	US	Developed	35286.67	10 months
155	Argentina - Bovine Hides	Argentina	Developing	6173.33	EC	Developed	19007.96	12 months 12 days
184	U.S. - Hot-Rolled Steel from Japan	US	Developed	36470.00	Japan	Developed	34773.33	15 months
207	Chile - Agricultural Products (Price Band)	Chile	Developing	4626.67	Argentina	Developing	4906.67	14 months
217 234	U.S. - Offset Act	US	Developed	40256.67	Australia	Developed	22190.00	11 months
					Brazil	Developing	3103.33	
					Chile	Developing	4783.33	
					EC	Developed	21712.39	
					India	Developing	543.33	
					Indonesia	Developing	910.00	
					Japan	Developed	34970.00	
					Korea	Developed	13826.67	
					Thailand	Developing	2110.00	
					Canada	Developed	25920.00	
Mexico	Developing	6870.00						

246	EC - Tariff Preferences	EC	Developed	25244.90	India	Developing	633.33	14 month 11 days
268	U.S. - OCTG	US	Developed	43256.67	Argentina	Developing	4483.33	12 months
285	U.S. - Gambling	US	Developed	45736.67	Antigua Barbuda	Developing	12103.33	11 months 2 weeks
265	EC - Sugar Subsidies	EC	Developed	28658.22	Australia	Developed	29993.33	12 months 3 days
266					Brazil	Developing	4023.33	
283					Thailand	Developing	2620.00	
269	EC - Chicken Cuts	EC	Developed	28658.22	Brazil	Developing	4023.33	9 months
286					Thailand	Developing	2620.00	
336	Japan - DRAMS CVDs	Japan	Developed	38043.33	Korea	Developed	21763.33	8 months 2 weeks
332	Brazil - Tyres	Brazil	Developing	6126.67	EC	Developed	33548.70	12 months
344	US - Mexican Stainless Steel AD Measures	US	Developed	48890.00	Mexico	Developing	8906.67	11 months 10 days
366	Colombia - Ports of Entry	Colombia	Developing	5056.67	Panama	Developing	7560.00	8 months 15 days
384	US - COOL	US	Developed	51913.33	Canada	Developed	49903.33	10 months
386					Mexico	Developing	9553.33	
414	China - GOES	China	Developing	5730.00	US	Developed	51913.33	8 months 15 days

Appendix 9. Protection Level of Product at Issue in Respondent and Complainant Country with RPT : Article 21.3(b)

DS #	Decision	Product at Issue	HS Code	Respondent		Complainants		Agreed RPT
				Country	Tariff Rate	Country	Tariff Rate	
2	U.S. - Gasoline	Conventional and reformulated gasoline	2710	US	6.40%	Venezuela	10.00%	15 months
31	Canada - Periodicals	Periodicals	4902	Canada	0.00%	US	0.30%	15 months
34	Turkey - Textiles	Textiles and clothing from India	5202 5205 5206 5208~5212 5510 5512 5513 5802 6101~6104 6106~6110 6112 6202~6205 6211 6302	Turkey	10.43%	India	36.93%	15 months
50	India - Patents (U.S.)	Pharmaceutical and agricultural chemical products	3001~3006 3008	India	36.23%	US	0.529%	15 months
56	Argentina - Textiles	Textile and apparel	51~64	Argentina	16.37%	US	9.25%	242 days
58	U.S. - Shrimp	Shrimp and shrimp products from the complainant countries	030613 030623	US	0.00%	India Malaysia Pakistan Thailand	13.83% 2.50% 21.25% 60.00%	13 months
69	EC - Poultry	Frozen poultry	0207	EC	6.13%	Brazil	13.00%	8 months 8 days

76	Japan - Agricultural Products II	Eight categories of plants namely, apricots, cherries, plums, pears, quince, peaches (including nectarines), apples and walnuts.	0802 0808 0809	Japan	8.21%	US	0.00%	9 months 12 days
79	India - Patents (EC)	Pharmaceutical and agricultural chemical products, as provided under TRIPS Art. 27	3001~3006 3808	India	34.86%	EC	0.88%	6 months 27 days
90	India - QRs	Imported products subject to India's import restrictions: 2,714 tariff lines within the eight digit level of HS	96	India	41.17%	US	4.48%	18 months 8 days
98	Korea - Dairy	Imports of certain dairy products (skimmed milk powder preparations)	0404 1901	Korea	32.84%	EC	13.60%	4 months 8 days
99	U.S. - DRAMS	DRAMs from Korea	8542	US	0.000%	Korea	0.667%	8 months
103	Canada - Dairy	Milk and dairy product industry	0401~0406 2105	Canada	8.812%	US	14.08%	14 months 4 days
113						New Zealand	1.96%	
122	Thailand - H-Beams	H - beams	7216	Thailand	12.37%	Poland	10.67%	6 months 15 days
132	Mexico - Corn Syrup	High - fructose corn syrup grades 42 & 55	170240 170260	Mexico	18.00%	US	5.70%	6 months 27 days

141	EC - Bed Linen	Cotton - type bed linen imports	6302	EC	11.44%	India	33.80%	5 months 2 days
146	India - Autos	Cars and their components.	8703 8706 8707 8708	India	48.75%	EC	6.97%	5 months
175						US	2.12%	
161	Korea - Beef	Beef imports from Australia and US	0201 0202	Korea	41.07%	US	16.05%	8 months
169						Australia	0.00%	
166	U.S. - Wheat Gluten Safeguards	Wheat gluten	1109	US	4.30%	EC	-	4 months 14 days
174 290	EC - Trademarks/Gis	Agricultural products and foodstuffs affected by the EC Regulation	1214 1301 1905 2106 2201 2203 3301	EC	2.87%	US	1.38%	11 months 2weeks
176	U.S. - Section 211 ("Havana Club")	Trademarks or trade names related to confiscated goods	Not Applicable	US	N/A	EC	N/A	11 months
177	U.S. - Lamb Safeguards	Fresh, chilled and frozen lamb meat	0204	US	0.00%	New Zealand	0.00%	6 months
178						Australia	0.00%	
179	U.S. - Sheet/Plate from Korea	Stainless steel plate in coils and stainless steel sheet and strip	7219 7220	US	5.67%	Korea	2.85%	7 months
189	Argentina - Floor Tiles	Imports of ceramic floors tiles	6904	Argentina	13.83%	EC	2.00%	5 months
202	U.S. - Line Pipe Safeguards	Circular - welded carbon quality line pipe	7306	US	4.00%	Korea	0.99%	5 months 23 days

204	Mexico - Telecoms	Certain basic public telecommunication services	Not Applicable	Mexico	N/A	US	N/A	13 months
206	U.S. - India Steel Plate	Certain cut - to - length carbon steel plates imported from India.	7208 7210 7211 7212 7225 7226	US	1.18%	India	38.33%	5 months
211	Egypt - Rebar	Concrete steel reinforcing bar	7214	Egypt	20.00%	Turkey	12.20%	9 months
212	U.S. - CVDs on EC Products	Products exported to US from EC by privatized companies that were previously state - owned and that received government subsidies before privatization, in particular products by GOES from Italy.	7208 7210 7211 7212 7219 7220 7221 7225 7226	US	0.676%	EC	0.538%	10 months
219	EC - Pipe Fittings	Malleable cast iron tube or pipe fittings imported from Brazil	7307	EC	3.39%	Brazil	14.75%	7 months
231	EC - Sardines	Two species of sardines found in different waters	160413 160420	EC	14.86%	Peru	12.00%	6 months
238	Argentina - Peach Safeguards	Peaches preserved in water	200870	Argentina	14.00%	Chile	6.33%	8 months 15 days

245	Japan - Apples	Apples	080810	Japan	17.00%	US	0.00%	6 months 20 days
257	U.S. - Lumber CVDs Final ("Lumber IV")	Certain softwood lumber imports from Canada	4407 4409	US	0.19%	Canada	0.18%	10 months
264	U.S. - Final Lumber AD Determination ("Lumber V")	Certain softwood lumber imports from Canada	4407 4409	US	0.19%	Canada	0.18%	7 months 15 days
276	Canada - Wheat	Wheat and grains from the United States	1001~1005 1008 1201 1204 1205 1206 1207	Canada	10.96%	US	0.42%	10 months 5 days
277	U.S. - Lumber ITC Investigation ("Lumber VI")	Softwood lumber from Canada	4407 4409	US	0.19%	Canada	0.18%	9 months
282	U.S. - OCTG	OCTG imports from Mexico	7304	US	0.00%	Mexico	12.01%	6 months
291	EC - Biotech Products ("GMOs")	Agricultural biotech products from the US, Canada and Argentina	0701 0702 070521 1005 110220 110313 110423 1201 1205 1209 2403 5201	EC	7.53%	US	70.00%	12 months
292						Canada	1.717%	
293						Argentina	7.472%	
294	U.S. - "Zeroing" of Dumping Margins (EC)	Not Applicable	N/A	US	N/A	EC	N/A	11 months

295	Mexico - Rice AD Measures	Long - grain white rice from the US	1006	Mexico	14.75%	US	11.20%	12 months / 8 months
296	U.S. - DRAMS CVD Investigation	DRAMS and memory modules containing DRAMS from Hynix Korea	8542	US	0.00%	Korea	0.00%	7 months, 16 days
299	EC - DRAMS Countervailing Measures	"DRAM" Chips from Hynix of Korea	8542	EC	0.000%	Korea	0.000%	8 months
302	Dominican Republic - Cigarettes	Cigarettes imported from Honduras & imported products in case of transitional surcharge measure and the foreign exchange fee	2402	Dominican Republic	20.00%	Honduras	28.33%	24 months
308	Mexico - Taxes on Soft Drinks	Soft drinks and other beverages that use any sweetener other than cane sugar and sweeteners used in the preparation of "soft drinks and syrups", cane sugar, beet sugar, HFCS	1701 1702 2202	Mexico	44.70%	US	9.78%	10 months 7 days / 9 months 8 days
312	Korea - Paper AD Duties	Business information paper and wood - free printing paper	4802 4810	Korea	0.00%	Indonesia	4.91%	8 months
322	U.S. - "Zeroing" (Japan)	Not Applicable	N/A	US	N/A	Korea	N/A	11 months
331	Mexico - Steel Pipes and Tubes	Various steel pipes and tubes	7306	Mexico	8.93%	Guatemala	3.24%	6 months

334	Turkey - Rice	Rice, including paddy, husked and white rice	1006	Turkey	39.39%	US	11.20%	6 months
335	U.S. - Shrimp AD Measure (Ecuador)	Certain frozen warm water shrimp from Ecuador	030613 160520	United States	1.25%	Ecuador	23.33%	6 months
337	EC - Salmon AD Measure	Farmed salmon	030212 030322	EC	4.75%	Norway	0.00%	10 months
339	China - Auto Parts	Imported auto parts (including CKD (completely knocked down) & SKD (semi - knocked down) kits).	8409 8413 8414 8481 8482 8483 8511 8708	China	7.35%	EC	3.42%	7 months 20 days
340						US	1.94%	
342						Canada	1.34%	
343	U.S. - Shrimp (Thailand)	Frozen warm water shrimp	030613 160520	US	1.25%	Thailand	30.00%	8 months
345	U.S. - Customs Bond Directive	Frozen warm water shrimp from	030613 160520	US	1.25%	India	12.50%	
350	U.S. - Continued Zeroing	Not Applicable	N/A	US	N/A	EC	N/A	10 months
362	China - IP Rights	Not Applicable	N/A	China	N/A	US	N/A	12 months
363	China - Publications and Audiovisual Products	Trading and distribution of reading materials, audiovisual home entertainment ("AVHE") products, sound recordings, and films for theatrical release	4901 4902 8523	China	1.05%	US	0.07%	14 months

367	Australia - Apples	Apples from New Zealand	080810	Australia	0.00%	New Zealand	0.00%	9 months
371	Thailand - Cigarettes (Philippines)	Cigarettes	2402	Thailand	60.00%	Philippines	10.00%	10 months / 15 months
375	EC - IT Products	Flat panel display devices, including those with digital DVI connectors; set - top boxes with communication function; and multi functional digital machines, capable of printing, scanning, copying, faxing	8443 8471 8473 8517 8521 8525 8528 8531	EC	3.17%	US	0.61%	9 months 9 days
376						Japan	0.000%	
377						Chinese Taipei	2.175%	
379	U.S. - Anti-Dumping and Countervailing Duties (China)	Circular welded carbon quality steel pipe; light - walled rectangular pipe and tube; laminated woven sacks; certain new pneumatic off - the - road tyres	3917 3921 3923 4011 4601 4602 5903 6305 7306	US	3.48%	China	10.14%	11 months

381	U.S. - Tuna II (Mexico)	Tuna and tuna products	030194 030195 030231 030232 030234 030235 030236 030341 030342 030344 030345 030346 160414	US	0.90%	Mexico	1.23%	13 months
382	U.S. - Orange Juice (Brazil)	Certain orange juice imports	200911 200919	US	-	Brazil	14%	9 months
383	U.S. - AD Measures on Carrier Bags	Polyethylene retail carrier bags	392321	US	3.00%	Thailand	3.33%	6 months
397	EC - Fasteners	Iron or steel fasteners	7138	EC	3.70%	China	9.25%	14 months 2weeks
394	China - Raw Materials	Export restraints imposed on the different raw materials	250830 252921 252922 260200 260600 260800 262011 262019 262040 270400 280469 280470 790111 790112 790120 790200 810411 810419 810420 811100	China	2.96%	US	1.73%	10 months 9 days
395						EC	1.47%	
398						Mexico	0.00%	

396	Philippines - Distilled Spirits	Domestic and imported distilled spirits, including specific types of spirits, such as gin, brandy, rum, vodka, whisky, and tequila or tequila flavoured spirits	2208	Philippines	12.86%	EC	0.00%	13 months 16 days
403						US	0.00%	
400	EC - Seal Products	Products, processed or unprocessed, deriving or obtained from seals	Refer to Footnote ²²⁴	EC	4.30%	Canada	4.94%	16 months
401						Norway	2.90%	
402	U.S. - Zeroing (Korea) ²²⁵	Stainless steel plate in coils; stainless steel sheet and strip in coils; and diamond sawblades and parts thereof	8202 8203 8204 8205 8206	US	4.03%	Korea	7.97%	8 months
							7219 7220	0.00%
404	U.S. - Shrimp (Vietnam)	Certain frozen warm water shrimp	030613 160520	US	1.11%	Vietnam	15.99%	10 months
405	EU - Footwear (China)	Certain footwear with leather uppers originating in China	640351 640359 640391 640399	EU	7.74%	China	10.00%	7 months 19 days
406	U.S. - Clove Cigarettes	Clove cigarettes from Indonesia	240220	US	-	Indonesia	40%	15 months
412	Canada - Renewable Energy (Canada - Feed-In Tariff Program)	Certain electricity generation equipment in the renewable energy sector, and the electricity generated by such equipment	Refer to Footnote ²²⁶	Canada	0.61%	Japan	0.48%	10 months
426						EC	3.197%	

413	China - Electronic Payment Services	Electronic payment services for all types of RMB payment card transactions	N/A	China	N/A	US	N/A	11 months
415	Dominican Republic - Bag and Fabric Safeguards	Polypropylene bags and tubular fabric	540720 630533	Dominican Republic	14.67%	Costa Rica	11.50%	2 months 1 week
416						Guatemala	12.50%	
417						Honduras	12.50%	
418						El Salvador	12.50%	
422	U.S. - Shrimp and Sawblades	(i) Certain frozen warm water shrimp; (ii) Diamond sawblades parts thereof	030613 160520 820239 820600	US	0.97% 0.00%	China	6.19% 9.25%	8 months
425	China - X-Ray Equipment	X - ray security inspection equipment	902219 902229	China	5.00%	EC	1.05%	9 months 25 days
427	China - Broiler Products	Broiler chicken products	020711 020712 020713 020714 050400	China	19.71%	US	0.00%	9 months 14 days
431	China - Rare Earths	Various forms of rare earths, tungsten, and molybdenum	Refer to Footnote ²²⁷	China	3.49%	US	3.37%	8 months 3 days
432						EU	2.33%	
433						Japan	0.79%	
436	U.S. - Carbon Steel (India)	Certain hot rolled carbon steel flat products from India	722511 722519 722530 722540 722599 722611 722619 722691 722699 721070 721090 721090 721214 721240 721250	US	6.19%	India	0.00%	15 months

449	U.S. – Countervailing and Anti-Dumping Measures (China)	Not Applicable	N/A	US	N/A	China	N/A	12 months
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²²⁴ 90 Products listed in Technical Guidance Note Setting out an Indicative List of the Codes of the Combined Nomenclature that may cover Prohibited Seal Products Publication made in accordance with Article 3(3) of Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal product (HS 020890, 021099, 0506, 050710, 050790, 051000, 051199, 150430, 151610, 151710, 151790, 151800, 160100, 160210, 160290, 210690, 230110, 230910, 230990, 300120, 300190, 300490, 340391, 340399, 382490, 410390, 410691, 410692, 411390, 411410, 411420, 411510, 420211, 420221, 420231, 420291, 420300, 420500, 430180, 430190, 430219, 430220, 430230, 430310, 6101, 6111, 6114, 6116, 6117, 6201, 6202, 6203, 6204, 6209, 621120, 621132, 6214, 6216, 6217, 6309, 6403, 6404, 6405, 640610, 640699, 650100, 650200, 650400, 650590, 650599, 650700, 660200, 6603, 7113, 7114, 7117, 911390, 960110, 960190, 960629, 960630, 970500.

²²⁵ Unlike other Zeroing disputes thus far, U.S. – Zeroing (Korea) (DS402) specifically dealt with certain United States final determinations and anti-dumping duty orders that included margins of dumping calculated using “zeroing” in the context of the “weighted-average to weighted-average” methodology in original investigations, specifically on stainless steel plate in coils, stainless steel sheet and strip in coils, and diamond sawblades and parts thereof from Korea. Interestingly, the United States and Korea agreed on two sets of RPT; With respect to the calculation of certain margins of dumping in the Diamond Sawblades and Parts Thereof (HS8202~8206) from Korea investigation, the reasonable period of time shall be 8 months, expiring on 24 October 2011. With respect to the calculation of certain margins of dumping in the Stainless Steel Plate in Coils from Korea and Stainless Steel Sheet and Strip in Coils (HS7219~7220) from Korea investigations, the reasonable period of time shall be 9 months, expiring on 24 November 2011. (Agreement under Article 21.3(b) of the DSU (WT/DS402/6 22 June 2011).

²²⁶ The product at issue includes 85 wind and solar photovoltaic (“PV”) electricity generation equipment in the renewable energy and electricity generated by such equipment. Official HS code for the product at issue was not available neither in the Panel/AB Report nor the official Canadian government documents on the Feed-in-Tariff Program. Thus, *HS codes and the Renewable Energy Sector*, published by ICSTD (International Center for Trade and Sustainable Development), was used as a reference. (HS3802.10, 3824.50, 3824.90, 3926.90, 6810.91, 700991, 700992, 711590, 730431, 730441, 730451, 730820, 730890, 730900, 741121, 741122, 741129, 741999, 761090, 761100, 830630, 840510, 840681, 840682, 841011, 841012, 841013, 841181, 841182, 841280, 841290, 841620, 851861, 841931, 841940, 841950, 841989, 841990, 842129, 842139, 843041, 840349, 847920, 847989, 848210, 848220, 848230, 848250, 848280, 848340, 850161, 850162, 850163, 850164, 850231, 850239, 850300, 850421, 850422, 850423, 850431, 850432, 850433, 850434, 850440, 853710, 853720, 854140, 854442, 854449, 854460, 890790, 900190, 900290, 900580, 901380, 902830, 903020, 903031, 903032, 903033, 903039, 903289.

²²⁷ 23 various forms of rare earths, tungsten, and molybdenum listed in Annex 1 of *China – Rare Earth Request for the Establishment of a Panel by the United States* (WT/DS431/6 29 June 2012). These products include rare earths under HS253090, 261100, 261220, 261310, 261390, 262099, 280530, 282570, 282590, 284170, 284180, 284610, 284690, 284990, 720270, 720280, 720299, 810110, 810194, 810197, 810210, 810294, 810297.

Appendix 10. Protection Level of Product at Issue in Respondent and Complainant Country with RPT : Article 21.3(c)

DS#	Decision	Product at Issue	HS Code	Respondent		Complainant		Awarded RPT
				Country	Tariff Rate	Country	Tariff Rate	
8	Japan - Alcohol	Vodka and other alcoholic beverages such as liqueurs, gin, gene, rum, whisky, brandy, domestic shochu	2208	Japan	1.35\$/l	EC	0.05\$/ l	15 months
10						Canada	0.12\$/ l	
11						US	0.23\$/ l	
27	EC - Bananas	Bananas imported from third countries	0803	EC	18.00%	Ecuador	16.33%	15 months 1 week
						Guatemala	17.00%	
						Honduras	18.00%	
						Mexico	20.00%	
						US	0.47%	
26	EC - Hormones	Meat and meat products treated with hormones for growth purposes	0206	EC	1.62%	US	0.00%	15 months
48						Canada	0.00%	
54	Indonesia - Autos	Imported motor vehicles and parts and components thereof	8702	Indonesia	47.54%	EC	7.03%	12 months (DSU21.3(c)) / 6 months (SCM 7.9)
55			8703			Japan	0.00%	
64			8704			US	4.47%	
59			8706					
			8707					
			8708					
			8709					
			8711					
			8714					
18	Australia - Salmon	Fresh, chilled or frozen ocean-caught Canadian salmon	0302	Australia	0%	Canada	0.16%	8 months

75	Korea - Alcohol	Imported distilled liquors and Soju	2208	Korea	23.34%	EC	6.07%	11 months 2 weeks
84						US	3.50%	
87 110	Chile - Alcohol	Distilled spirits falling within HS heading 2208, including pisco, imported distilled spirits such as whisky, vodka, rum, gin, etc.	2208	Chile	9%	EC	0.024\$/ 1	14 months 9 days
114	Canada - Pharmaceuticals	Patented pharmaceuticals	3003 3004	Canada	0.00%	EC	0.00%	6 months
139	Canada - Autos	Motor vehicle imports and imported motor vehicle parts and materials.	8701 8702 8703 8704 8705 8706 8708	Canada	4.27%	Japan	0.00%	8 months (DSU 21.3(c)) / 90 days (SCM 4.7)
142						EC	7.06%	
160	U.S. - Copyright Act	Not Applicable	N/A	US	N/A	EC	N/A	12 months
136 162	U.S. - 1916 Act	Not Applicable	N/A	US	N/A	EC	N/A	10 months
						Japan		
170	Canada - Patent Term	Not Applicable	N/A	Canada	N/A	US	N/A	10 months
155	Argentina - Bovine Hides	Bovine hides and calf skins, semi finished and finished leather	4101 4103 4107	Argentina	7.81%	EC	2.18%	12 months 12days
184	U.S. - Hot-Rolled Steel from Japan	Certain hot-rolled flat rolled carbon quality steel products	7208	US	1.61%	Japan	1.25%	15 months
207	Chile - Agricultural Products (Price Band)	Wheat, wheat flour, sugar and edible vegetable oils	1001 1101 1701 1507~1515	Chile	7.00%	Argentina	11.65%	14 months

217 234	U.S. - Offset Act ("Byrd Amendment")	Not Applicable	N/A	US	N/A	Australia	N/A	11 months
						Brazil		
						Chile		
						EC		
						India		
						Indonesia		
						Japan		
						Korea		
						Thailand		
						Canada		
Mexico								
246	EC - Tariff Preferences	Products benefiting from the Drug Arrangements under the EC GSP scheme	N/A	EC	N/A	India	N/A	14 months 11days
268	U.S. - OCTG	Tubes, pipes,hollow profiles, seamless, of iron or steel.	7304	US	0.24%	Argentina	16.00%	12 months
285	U.S. - Gambling	Not Applicable	N/A	US	N/A	Antigua Barbuda	N/A	11 months 2 weeks
265	EC - Sugar Subsidies	Sugar beet, sugar cane, molasses, maple sugar, maple syrup, artificial honey, beet pulp	1701 1702 1703 1212	EC	4.65%	Australia	1.11%	12 months 3 days
Brazil						13.83%		
Thailand						24.76%		
269	EC - Chicken Cuts	Frozen boneless chicken cuts impregnated with salt content of 1.2-3%	0207 0210	EC	9.40%	Brazil	10.00%	9 months
286						Thailand	38.08%	

336	Japan - DRAMS CVDs	Dynamic random access memories manufactured Hynix of Korea	8542	Japan	0.00%	Korea	1.12%	8 months, 2 weeks
332	Brazil - Tyres	Retreaded tyres	4012	Brazil	16.00%	EC	4.13%	12 months
344	US - Mexican Stainless Steel AD Measures	Stainless steel sheet and strip in coils	7219 7220	US	0.000%	Mexico	5.23%	11 months, 10 days
366	Colombia - Ports of Entry	Certain textiles, apparel and footwear classifiable under HS Chapters 50-64 of Colombia's Tariff Schedule, which were re-exported and re-exported from the Colon Free Zone and Panama to Colombia	50~64	Colombia	17.43%	Panama	6.08%	8 months, 15 days
384	US - COOL	Imported cattle and hogs used in the production of beef and pork in the US	0201 0202 0203	US	8.06%	Canada	7.40%	10 months
386						Mexico	21.33%	
414	China - GOES	Grain oriented flat-rolled electrical steel (GOES)	7225 7226	China	4.44%	US	0.00%	8 months 15 days

Appendix 11. Means of Implementation and RPT : Article 21.3(b)

DS#	Decision	Means of Implementation	Agreed RPT
2	U.S. - Gasoline	Administrative	15 months
31	Canada - Periodicals	Legislative	15 months
34	Turkey - Textiles	Administrative	15 months
50	India - Patents (U.S.)	Legislative	15 months
56	Argentina - Textiles	Administrative	242 days
58	U.S. - Shrimp	Administrative	13 months
69	EC - Poultry	Legislative	8 months 8 days
76	Japan - Agricultural Products II	Administrative	9 months 12 days
79	India - Patents (EC)	Legislative	6 months 27 days
90	India - QRs	Administrative	18 months 8 days
98	Korea - Dairy	Administrative	4 months 8 days
99	U.S. - DRAMS	Administrative	8 months
103, 113	Canada - Dairy	Administrative	14 months 4 days
122	Thailand - H-Beams	Administrative	6 months 15 days
132	Mexico - Corn Syrup	Administrative	6 months 27 days
141	EC - Bed Linen	Legislative	5 months 2 days
146, 175	India - Autos	Administrative	5 months
161, 169	Korea - Beef	Administrative	8 months
166	U.S. - Wheat Gluten Safeguards	Administrative	4 months 14 days
174, 290	EC - Trademarks / Gis	Legislative	11months 2weeks
176	U.S. - Section 211	Legislative	11 months
177, 178	U.S. - Lamb Safeguards	Administrative	6 months
179	U.S. - Sheet/Plate from Korea	Administrative	7 months
189	Argentina - Floor Tiles	Administrative	5 months
202	U.S. - Line Pipe Safeguards	Administrative	5 months 23 days
204	Mexico - Telecoms	Administrative	13 months
206	U.S. - India Steel Plate	Administrative	5 months
211	Egypt - Rebar	Administrative	9 months
212	U.S. - CVDs on EC Products	Administrative	10 months
219	EC - Pipe Fittings	Legislative	7 months
231	EC - Sardines	Legislative	6 months
238	Argentina - Peach Safeguards	Administrative	8 months 15 days
245	Japan - Apples	Administrative	6 months 20 days

257	U.S. - Lumber CVDs Final	Administrative	10 months
264	U.S. - Final Lumber AD	Administrative	7 months 15 days
276	Canada - Wheat	Legislative	10 months 5 days
277	U.S. - Lumber ITC Investigation	Administrative	9 months
282	U.S. - OCTG	Administrative	6 months
291,292,293	EC - Biotech Products ("GMOs")	Legislative	12 months
294	U.S. - "Zeroing" of Dumping Margins (EC)	Administrative	11 months
295	Mexico - Rice AD Measures ²²⁸	Legislative	12 months
		Administrative	8 months
296	U.S. - DRAMS CVD Investigation	Administrative	7 months 16 days
299	EC - DRAMS CV Measures	Administrative	8 months
302	Dominican Republic - Cigarettes	Administrative	24 months
308	Mexico - Taxes on Soft Drinks ²²⁹	Legislative	10 months 7days
		Administrative	9 months 8 days
312	Korea - Paper AD Duties	Administrative	8 months
322	U.S. - "Zeroing" (Japan)	Administrative	11 months
331	Mexico - Steel Pipes & Tubes	Administrative	6 months
334	Turkey - Rice	Administrative	6 months
335	U.S. - Shrimp AD Measure (Ecuador)	Administrative	6 months
337	EC - Salmon AD Measure	Administrative	10 months
339,340,342	China - Auto Parts	Administrative	7 months, 20 days
343	U.S. - Shrimp (Thailand)	Administrative	8 months
345	U.S. - Customs Bond Directive	Administrative	8 months
350	U.S. - Continued Zeroing	Administrative	10 months
362	China - IP Rights	Legislative	12 months
363	China - Publications and Audiovisual Products	Administrative	14 months
367	Australia - Apples	Administrative	9 months
371	Thailand - Cigarettes (Philippines) ²³⁰	Administrative	10 months / 15 months
375,376,377	EC - IT Products	Legislative	9 months, 9days
379	U.S. - AD & CVD (China) ²³¹	Legislative	11 months
		Administrative	

381	U.S. - Tuna II (Mexico)	Administrative	13 months
382	U.S. - Orange Juice (Brazil)	Administrative	9 months
383	U.S. - AD on Carrier Bags	Administrative	6 months
397	EC - Fasteners	Legislative	14 months 2 weeks
394,395,398	China - Raw Materials	Administrative	10 months 9 days
396, 403	Philippines - Distilled Spirits	Legislative	13 months 16 days
400, 401	EC - Seal Products	Legislative	16 months
402	U.S. - Zeroing (Korea) ²³²	Administrative	8 months / 9 months
404	U.S. - Shrimp (Vietnam)	Administrative	10 months
405	EU - Footwear (China)	Legislative	7 months 19 days
406	U.S. - Clove Cigarettes	Legislative	15 months
412, 426	Canada - Renewable Energy (Canada - Feed-in Tariff)	Legislative	10 months

²²⁸ Here the Parties agreed to two different periods of RPT with respect to different measures that had been found to be in violation of WTO rules. 12 months were granted for violations requiring resolution via legislative means of implementation and 8 months were granted for those requiring resolution via administrative means of implementation. <Agreement under Article 21.3(b) of the DSU WT/DS295/12 (24 May 2006)>.

²²⁹ Mexico and the United States wish to inform you that, pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), we have mutually agreed that the reasonable period of time for Mexico to comply with the recommendations and rulings of the Dispute Settlement Body in the dispute Mexico – Tax Measures on Soft Drinks and other Beverages (WT/DS308) shall be nine months and 8 days, expiring on 1 January 2007. However, if the Mexican Congress enacts legislation between 1 December and 31 December 2006, repealing the soft drink and distribution taxes found inconsistent with the covered agreements, the reasonable period of time shall be ten months and 7 days, expiring on 31 January 2007. At the end of the day, the Respondent fully implemented DSB's recommendations and ruling via legislative process within 10 months, 7 days of RPT. <Agreement under Article 21.3(b) of the DSU WT/DS308/15 5 July 2006>.

²³⁰ With respect to the DSB's recommendations and rulings regarding paragraphs 8.3(b) and (c) of the Panel report (WT/DS371/R), the reasonable period of time to comply shall be 15 months, expiring on 15 October 2012. With respect to the DSB's recommendations and rulings regarding all other measures, the reasonable period of time to comply shall be 10 months, expiring on 15 May 2012. <Agreement under Article 21.3(b) of the DSU WT/DS371/4 (27 September 2011)>.

²³¹ The US implemented recommendation and rulings of the DSB via both legislative and administrative process. <Status Report by the United States Addendum WT/DS379/12/Add.7 (21 August 2012)>.

²³² With respect to the calculation of certain margins of dumping in the Diamond Sawblades and Parts Thereof from Korea investigation, the reasonable period of time shall be 8 months, expiring on 24 October 2011. [...] With respect to the calculation of certain margins of dumping in the Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip in Coils from Korea investigations, the reasonable period of time shall be 9 months, expiring on 24 November 2011. <Agreement under Article 21.3(b) of the DSU WT/DS402/6 (22 June 2011)>.

413	China - Electronic Payment	Administrative	11 months
415,416 ,417,418	Dominican Republic - Bag and Fabric Safeguards	Administrative	2 months 1 week
422	U.S. - Shrimp and Sawblades	Administrative	8 months
425	China - X-Ray Equipment	Administrative	9 months 25 days
427	China - Broiler Products	Administrative	9 months 14 days
431,432,433	China - Rare Earths	Administrative	8 months 3 days
436	U.S. - Carbon Steel (India)	Legislative	15 months
449	U.S. - CVD & AD (China)	Legislative	12 months

Appendix 12. Means of Implementation and RPT : Article 21.3(c)

DS#	Decision	Means of Implementation	Agreed RPT
8, 10, 11	Japan - Alcohol	Legislative	15 months
27	EC - Bananas	Legislative	15 months 1 week
26, 48	EC - Hormones	Legislative	15 months
54,55,59,64	Indonesia - Autos	Legislative	12 months / 6 months
18	Australia - Salmon	Administrative	8 months
75, 84	Korea - Alcohol	Legislative	11 months 2 weeks
87, 110	Chile - Alcohol	Legislative	14 months 9 days
114	Canada - Pharmaceuticals	Administrative	6 months
139, 142	Canada - Autos	Administrative	8 months / 90 days
160	U.S. - Copyright	Legislative	12 months
136, 162	U.S. - 1916 Act	Legislative	10 months
170	Canada - Patent Term	Legislative	10 months
155	Argentina - Bovine Hides	Administrative	12 months 12 days
184	U.S. - Hot-Rolled Steel from Japan	Legislative	15 months
207	Chile - Agricultural Products (Price Band)	Legislative	14 months
217, 234	U.S. - Offset Act ("Byrd Amendment")	Legislative	11 months
246	EC - Tariff Preferences	Legislative	14 months 11 days
268	U.S. - OCTG	Administrative	12 months
285	U.S. - Gambling	Legislative	11 months 2 weeks
265,266,283	EC - Sugar Subsidies	Legislative	12 months 3 days
269, 286	EC - Chicken Cuts	Legislative	9 months
336	Japan - DRAMS CVDs	Administrative	8 months 2 weeks
332	Brazil - Tyres	Administrative	12 months
344	US - Mexican Stainless Steel AD Measures	Administrative	11 months 10 days
366	Colombia - Ports of Entry	Administrative	8 months 15 days
384, 386	US - COOL	Administrative	10 months
414	China - GOES	Administrative	8 months 15 days

Appendix 13. Violation of certain Covered Agreements and RPT : Article 21.3(b)

DS#	Decision	Agreement	Agreed RPT
394,395,398	China - Raw Materials	Accession	10 months 9 days
431,432,433	China - Rare Earths		8 months 3 days
		Total : 2 disputes	Average RPT : 9.20 months
99	U.S. - DRAMS	AD	8 months
122	Thailand - H-Beams	AD	6 months 15 days
132	Mexico - Corn Syrup	AD	6 months 27 days
141	EC - Bed Linen	AD	5 months 2 days
179	U.S. - Sheet/Plate from Korea	AD	7 months
189	Argentina - Floor Tiles	AD	5 months
206	U.S. - India Steel Plate	AD	5 months
211	Egypt - Rebar	AD	9 months
219	EC - Pipe Fittings	AD	7 months
264	U.S. - Final Lumber AD	AD	7 months 15 days
277	U.S. - Lumber ITC Investigation	AD	9 months
282	U.S. - OCTG	AD	6 months
294	U.S. - "Zeroing" of Dumping Margins (EC)	AD	11 months
295	Mexico - Rice AD Measures	AD	12 months / 8 months
312	Korea - Paper AD Duties	AD	8 months
322	U.S. - "Zeroing" (Japan)	AD	11 months
331	Mexico - Steel Pipes & Tubes	AD	6 months
335	U.S. - Shrimp AD Measure (Ecuador)	AD	6 months
337	EC - Salmon AD Measure	AD	10 months
343	U.S - Shrimp (Thailand)	AD	8 months
345	U.S. - Customs Bond Directive	AD	8 months
350	U.S. - Continued Zeroing	AD	10 months
379	U.S. - AD & CVD (China)	AD	11 months
382	U.S. - Orange Juice (Brazil)	AD	9 months
383	U.S. - AD on Carrier Bags	AD	6 months
397	EC - Fasteners	AD	14 months 2 weeks
402	U.S. - Zeroing (Korea)	AD	8 months / 9 months

404	U.S. - Shrimp (Vietnam)	AD	10 months
405	EU - Footwear (China)	AD	7 months 19 days
422	U.S. - Shrimp and Sawblades	AD	8 months
425	China - X-Ray Equipment	AD	9 months 25 days
427	China - Broiler Products	AD	9 months 14 days
		Total : 32 disputes	Average RPT : 8.30 months
69	EC - Poultry	Agriculture	8 months 8 days
90	India - QRs	Agriculture	18 months 8 days
103, 113	Canada - Dairy	Agriculture	14 months 4 days
161, 169	Korea - Beef	Agriculture	8 months
334	Turkey - Rice	Agriculture	6 months
		Total : 5 disputes	Average RPT : 10.93 months
34	Turkey - Textiles	ATC	15 months
		Total : 1 disputes	Average RPT : 15 months
371	Thailand - Cigarettes (Philippines)	Customs	10 months/ 15 months
		Total : 1 disputes	Average RPT : 12.50 months
204	Mexico - Telecoms	GATS	13 months
363	China - Publications and Audiovisual Products	GATS	14 months
413	China - Electronic Payment	GATS	11 months
		Total : 3 disputes	Average RPT : 12.67 months
2	U.S. - Gasoline	GATT	15 months
31	Canada - Periodicals	GATT	15 months
34	Turkey - Textiles	GATT	15 months
56	Argentina - Textiles	GATT	242 days
58	U.S. - Shrimp	GATT	13 months
90	India - QRs	GATT	18 months 8 days
103, 113	Canada - Dairy	GATT	14 months 4 days
146, 175	India - Autos	GATT	5 months
161, 169	Korea - Beef	GATT	8 months
177, 178	U.S. - Lamb Safeguards	GATT	6 months
202	U.S. - Line Pipe Safeguards	GATT	5 months 23 days
219	EC - Pipe Fittings	GATT	7 months

238	Argentina - Peach Safeguards	GATT	8.5 months
276	Canada - Wheat	GATT	10 months 5 days
294	U.S. - "Zeroing" of Dumping Margins (EC)	GATT	11 months
302	Dominican Republic - Cigarettes	GATT	24 months
308	Mexico - Taxes on Soft Drinks	GATT	10 months 7 days /9 months 8 days
322	U.S. - "Zeroing" (Japan)	GATT	11 months
334	Turkey - Rice	GATT	6 months
339,340,342	China - Auto Parts	GATT	7 months 20 days
350	U.S. - Continued Zeroing	GATT	10 months
363	China - Publications and Audiovisual Products	GATT	14 months
371	Thailand - Cigarettes (Philippines)	GATT	10 months / 15 months
375,376,377	EC - IT Products	GATT	9 months 9 days
394,395,398	China - Raw Materials	GATT	10 months 9 days
396, 403	Philippines - Distilled Spirits	GATT	13 months 16 days
400, 401	EC - Seal Products	GATT	16 months
404	U.S. - Shrimp (Vietnam)	GATT	10 months
405	EU - Footwear (China)	GATT	7 months 19 days
412, 426	Canada - Renewable Energy (Canada - Feed-in Tariff)	GATT	10 months
415,416 ,417,418	Dominican Republic - Bag and Fabric Safeguards	GATT	2 months 1 week
427	China - Broiler Products	GATT	9 months 14 days
431,432,433	China - Rare Earths	GATT	8 months 3 days
		Total : 35 disputes	Average RPT : 10.68 months
69	EC - Poultry	Licensing	8 months 8 days
		Total : 1 disputes	Average RPT : 8.27 months
98	Korea - Dairy	Safeguard	4 months 8 days
166	U.S. - Wheat Gluten Safeguards	Safeguard	4 months 14 days
177, 178	U.S. - Lamb Safeguards	Safeguard	6 months
202	U.S. - Line Pipe Safeguards	Safeguard	5 months 23 days
238	Argentina - Peach Safeguards	Safeguard	8 months 15 days
415,416 ,417,418	Dominican Republic - Bag and Fabric Safeguards	Safeguard	2 months 1 week

		Total : 6 disputes	Average RPT : 5.20 months
212	U.S. - CVDs on EC Products	SCM	10 months
257	U.S. - Lumber CVDs Final	SCM	10 months
277	U.S. - Lumber ITC Investigation	SCM	9 months
295	Mexico - Rice AD Measures	SCM	12 months / 8 months
296	U.S. - DRAMS CVD Investigation	SCM	7 months 16 days
299	EC - DRAMS CV Measures	SCM	8 months
343	U.S. - Shrimp (Thailand)	SCM	8 months
345	U.S. - Customs Bond Directive	SCM	8 months
379	U.S. - AD & CVD (China)	SCM	11 months
427	China - Broiler Products	SCM	9 months 14 days
436	U.S. - Carbon Steel (India)	SCM	15 months
449	U.S. - CVD & AD (China)	SCM	12 months
		Total : 12 disputes	Average RPT : 9.85 months
76	Japan - Agricultural Products II	SPS	9 months 12 days
245	Japan - Apples	SPS	6 months 20 days
291,292,293	EC - Biotech Products ("GMOs")	SPS	12 months
367	Australia - Apples	SPS	9 months
		Total : 4 disputes	Average RPT : 9.27 months
231	EC - Sardines	TBT	6 months
381	U.S. - Tuna II (Mexico)	TBT	13 months
400, 401	EC - Seal Products	TBT	16 months
406	U.S. - Clove Cigarettes	TBT	15 months
		Total : 4 disputes	Average RPT : 12.50 months
412, 426	Canada - Renewable Energy	TRIMs	10 months
		Total : 1 disputes	Average RPT : 10.00 months
50	India - Patents (U.S.)	TRIPs	15 months
79	India - Patents (EC)	TRIPs	6 months 27 days
174, 290	EC - Trademarks / Gis	TRIPs	11 months 2 weeks
176	U.S. - Section 211	TRIPs	11 months

362	China - IP Rights	TRIPs	12 months
		Total : 5 disputes	Average RPT : 11.27 months
405	EU - Footwear (China)	WTO	7 months 19 days
		Total : 1 disputes	Average RPT : 7.63 months

Appendix 14. Violation of certain Covered Agreements and RPT : Article 21.3(c)

DS#	Decisions	Agreements	Awarded RPT
207	Chile - Agricultural Products (Price Band)	Agriculture	14 months
265,266,283	EC - Sugar Subsidies	Agriculture	12 months 3 days
		Total : 2 disputes	Average RPT : 13.05 months
136, 162	U.S. - 1916 Act	AD	10 months
184	U.S. - Hot-Rolled Steel from Japan	AD	15 months
217, 234	U.S. - Offset Act ("Byrd Amendment")	AD	11 months
268	U.S. - OCTG	AD	12 months
344	U.S. - Mexican Stainless Steel AD Measures	AD	11 months 10 days
414	China - GOES	AD	8 months 15 days
		Total : 6 disputes	Average RPT : 11.31 months
366	Colombia - Ports of Entry	Customs	8 months 15 days
		Total : 1 disputes	Average RPT : 8.5 months
246	EC - Tariff Preferences	Enabling	14 months 11 days
		Total : 1 disputes	Average RPT : 14.37 months
27	EC - Bananas	GATS	15 months 1 week
139, 142	Canada - Autos	GATS	8 months
285	U.S. - Gambling	GATS	11 months 2 weeks
		Total : 3 disputes	Average RPT : 11.57 months
8, 10, 11	Japan - Alcohol	GATT	15 months
27	EC - Bananas	GATT	15 months 1 week
54,55,59,64	Indonesia - Autos	GATT	12 months
75, 84	Korea - Alcohol	GATT	11 months 2 weeks
87, 110	Chile - Alcohol	GATT	14 months 9 days
139, 142	Canada - Autos	GATT	8 months
136, 162	U.S. - 1916 Act	GATT	10 months
155	Argentina - Bovine Hides	GATT	12 months 12 days
207	Chile - Agricultural Products (Price Band)	GATT	14 months
246	EC - Tariff Preferences	GATT	14 months 11 days
269, 286	EC - Chicken Cuts	GATT	9 months
332	Brazil - Tyres	GATT	12 months

344	U.S. - Mexican Stainless Steel AD Measures	GATT	11 months 10 days
366	Colombia - Ports of Entry	GATT	8 months 15 days
384, 386	US - COOL	GATT	10 months
		Total : 15 disputes	Average RPT : 11.84 months
207	Chile - Agricultural Products (Price Band)	Safeguard	14 months
		Total : 1 disputes	Average RPT : 14 months
54,55,59,64	Indonesia - Autos	SCM	12 months
139, 142	Canada - Autos	SCM	8 months
217, 234	U.S. - Offset Act ("Byrd Amendment")	SCM	11 months
336	Japan - DRAMS CVDs	SCM	8 months 2 weeks
414	China - GOES	SCM	8 months 15 days
		Total : 5 disputes	Average RPT : 9.59 months
26, 48	EC - Hormones	SPS	15 months
18	Australia - Salmon	SPS	8 months
		Total : 2 disputes	Average RPT : 11.50 months
52, 53	US - COOL	TBT	10 months
		Total : 1 dispute	Average RPT : 10 months
54,55,59,64	Indonesia - Autos	TRIMs	12 months
		Total : 1 dispute	Average RPT : 12 months
114	Canada - Pharmaceuticals	TRIPs	6 months
160	US - Copyright	TRIPs	12 months
170	Canada - Patent Term	TRIPs	10 months
		Total : 3 disputes	Average RPT : 9.33 months

Abstract (Korean)

WTO 분쟁해결절차에서의 합리적 이행기간 패턴 및 결정 요인에 관한 연구 : DSU제21조3항(b)와 제21조3항(c) 중심으로

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WTO 회원국 간 무역 분쟁 발생 시, 분쟁해결 절차를 거쳐 패널 또는 상소기구에 의해 최종 판단이 내려지고 그 내용을 담은 최종보고서를 분쟁해결기구(DSB)가 채택하면 패소국은 즉시 DSB의 권고 사항을 이행해야 하는데 즉각 이행이 불가능할 경우 패소국은 합리적 이행 기간(RPT)을 활용할 수 있다. RPT는 WTO 규정 시행 및 더 나아가 세계 무역 자유화와 보호무역 탈피에 지대한 영향을 미치는 요소 중 하나로 ‘분쟁해결규칙 및 절차에 관한 양해’ (DSU) 제21조3항의 절차에 따라 그 기간을 정하고 있으나 안타깝게도 해당 DSU 조항은 정확히 어떠한 결정 요인 및 기준에 의해 RPT 기간이 확정되는지에 대해서는 명시하고 있지 않다.

따라서 본 연구는 과거 WTO 분쟁 사례에서의 RPT 패턴 분석을 통해 그 결정 요인 및 기준을 모색하고자 이미 확정된 RPT 기간과 4개의 잠재적 결정 요인 (1) 제소국과 피소국의 경제 규모 및 경제 발전 수준 (GNI/Capita), 2) 제소국과 피소국의 분쟁 대상 품목에 대한 보호 수준 (관세율), 3) 패소국의 이행 방안 (행정 또는 입법 절차 필요 여부) 및 4) 패소국이 위반한 WTO 대상 협정) 간의 관계를 면밀히 분석하였다. 보다 심층적이고 실질적인 분석을 위해 DSU 제21조3항(b)와 제21조3항(c)에 의거하여 결정된 RPT에 다양한 통계 기법을 적용한 첫 연구 사례로서 본 연구는 아래의 결과를 도출하였다.

우선 제소국과 피소국의 경제 규모 및 경제 발전 수준과 RPT 기간

간에 통계적으로 유의미한 관계는 찾을 수 없었으나, DSU 제21조3항(c) RPT의 경우 현재 DSU에서 명시하는 것과 같이 개발도상국의 입장을 고려한 특별대우 또는 배려는 RPT 기간 결정 시 쉽게 부여되지 않으며 이러한 현상은 특히 개발도상국이 제소국으로 분쟁에 참여했을 때 더 두드러지게 나타났다. 단, DSU 제21조3항(b) RPT의 경우 양국간 자유로운 협의를 통해 그 기간을 결정하는 만큼 제 21조 3항(c)의 중재자 보다 상대국의 경제 규모 및 발전 수준을 더 고려하여 최종 RPT를 결정하는 것으로 나타났다. 또한 제소국과 피소국에서의 분쟁 대상 품목에 대한 보호 수준은 DSU 제 21조3항(b)와 (c)항에 따라 결정된 RPT 기간에 영향을 미치지 않는 것으로 밝혀졌다. 세 번째 잠재 요소인 패소국의 이행 방안은 RPT 기간과 유의미한 관계를 가지고 있었는데 DSU 제21조3항(b)와 (c)항 모두에서 패소국의 이행을 위해 행정 절차를 거쳐야 하는 경우, 입법 절차를 거쳐야 하는 경우보다 RPT 기간이 더 짧은 것으로 나타났다. 마지막으로 피소국이 세이프가드, 반덤핑, 보조금 및 상계관세 등 무역구제 협정을 위반한 분쟁에서의 RPT는 비무역구제 협정을 위반한 분쟁에서보다 그 기간이 짧은 것으로 나타났는데, 이는 무역구제 협정 위반 시 대부분 행정 절차를 통한 이행이 가능하기 때문에 위반 협정에 따른 기간 차이가 아닌 실질적으로는 패소국의 이행 방안에 의해 발생하는 차이인 것으로 나타났다.

본 연구가 1995년 1월부터 2014년 12월까지 결정된 RPT에 대한 종합적, 통계적 분석을 통해 도출한 주요 결과는 합리적 이행 기간이 하나의 특정 결정 요인 또는 기준에 의해서가 아닌 각 분쟁 사례와 관련된 여러 주요 사항을 종합적으로 고려하여 결정된다는 것을 시사하고 있다. 물론 WTO 규정 시행을 위해 모든 패소국의 즉각 이행이 우선시 되어야 하지만 부득이하게 합리적 이행 기간이 필요한 경우 본 연구가 도출한 합리적 이행 기간의 주요 패턴 및 결정 요인에 대한 결과는 해당 회원국뿐 아니라 분쟁해결기구에게도 유용하고 유의미한 지침이 될 것이다.

주요어 : 합리적 이행 기간, DSU 제 21.3 (b), DSU 제 21.3(c), 특별한 사정, 분쟁 해결 절차, 분쟁해결규칙과 절차에 관한 양해, 세계무역기구 (WTO)

학번 : 2009-22198