

## ENVIRONMENT: DISPUTES 9

# European Communities — Asbestos

The Panel and the Appellate Body in this case both rejected Canada's challenge to France import ban on asbestos and asbestos-containing products, reinforcing the view that the WTO Agreements support members' ability to protect human health and safety at the level of protection they deem appropriate.

---

Chrysotile asbestos is generally considered to be a highly toxic material, exposure to which poses significant threats to human health (such as asbestosis, lung cancer and mesothelioma). However, due to certain qualities (such as resistance to very high temperature), chrysotile asbestos has been widely used in various industrial sectors. To control the health risks associated with asbestos, the French Government, which had previously been an importer of large quantities of chrysotile asbestos, imposed a ban on the substance as well as on products that contained it.

The European Communities justified its prohibition on the grounds of human health protection, arguing that asbestos was hazardous not only to the health of construction workers subject to prolonged exposure, but also to population subject to occasional exposure. Being the second largest producer of asbestos world-wide, Canada contested the prohibition in the WTO. While it did not challenge the hazards associated with asbestos, it argued that a distinction should be made between chrysotile fibres and chrysotile encapsulated in a cement matrix. The latter, it argued, prevented release of fibres and did not endanger human health. It also argued that the substances which France was using as substitutes for asbestos had not been sufficiently studied and could themselves be harmful to human health. Canada claimed that the Decree violated GATT Articles III:4 and XI, and Articles 2.1, 2.2, 2.4 and 2.8 of the TBT Agreement, and also nullified or impaired benefits under GATT Article XXIII:1(b). The EC argued that the Decree was not covered by the TBT Agreement. With regard to GATT 1994, it requested the panel to confirm that the Decree was either compatible with Article III:4 or necessary to protect human health within the meaning of Article XX(b).

Despite finding a violation of Article III, the Panel ruled in favour of the European Communities. Under Article III (which requires countries to grant equivalent treatment to like products) the Panel found that the EC ban constituted a violation since asbestos and asbestos substitutes had to be considered "like products" within the meaning of that Article. The panel argued that health risks associated with asbestos were not a relevant factor in the consideration of product likeness. However, the Panel found that the French ban could be justified under Article

XX(b). In other words, the measure could be regarded as one which was “necessary to protect animal, human, plant life or health.” It also met the conditions of the chapeau of Article XX. It therefore ruled in favour of the European Communities. On appeal, the WTO Appellate Body upheld the panel’s ruling in favour of the EC, while modifying its reasoning on a number of issues. For instance, it reversed the Panel’s finding that it was not appropriate to take into consideration the health risks associated with chrysotile asbestos fibres in examining the “likeness” of products under GATT Article III:4. The Appellate Body also argued that the case should have been looked at under the TBT Agreement rather than under GATT rules, but did not itself pursue the analysis under TBT since the Appellate Body only has a mandate to examine issues of “law” in dispute settlement (and cannot itself embark on new analyses).

[< Previous \(edis08\\_e.htm\)](#) [Next > \(edis00\\_e.htm\)](#)