

regulation of "products containing asbestos fibres", which are also prohibited by Article 1, paragraphs I and II of the Decree. It is important to note here that, although formulated negatively - products containing asbestos are prohibited - the measure, in this respect, effectively prescribes or imposes certain objective features, qualities or "characteristics" on all products. That is, in effect, the measure provides that all products must not contain asbestos fibres. Although this prohibition against products containing asbestos applies to a large number of products, and although it is, indeed, true that the products to which this prohibition applies cannot be determined from the terms of the measure itself, it seems to us that the products covered by the measure are identifiable: all products must be asbestos free; any products containing asbestos are prohibited. We also observe that compliance with the prohibition against products containing asbestos is mandatory and is, indeed, enforceable through criminal sanctions. [FN42]

73. Articles 2, 3 and 4 of the Decree also contain certain exceptions to the prohibitions found in Article 1 of the Decree. As we have already noted, these exceptions would have no meaning in the absence of the rest of the measure because they define the scope of the prohibitions in the measure. The nature of these exceptions is to permit the use of certain products containing chrysotile asbestos fibres, subject to compliance with strict administrative requirements. The scope of the exceptions is determined by an "exhaustive list" of products that are permitted to contain chrysotile asbestos fibres, which is promulgated and reviewed annually by a government Minister. [FN43] The inclusion of a product in the list of exceptions depends on the absence of an acceptable alternative fibre for incorporation into a particular product, and the demonstrable provision of "all technical guarantees of safety". [FN44] Any person seeking to avail himself of these limited exceptions must provide a detailed justification to the authorities, complete with necessary supporting documentation concerning "the state of scientific and technological progress". [FN45] Compliance with these administrative requirements is mandatory. [FN46]

74. Like the Panel, we consider that, through these exceptions, the measure sets out the "applicable administrative provisions, with which compliance is mandatory" for products with certain objective "characteristics". [FN47] The exceptions apply to a narrowly defined group of products with particular "characteristics". Although these products are not named, the measure provides criteria which permit their identification, both by reference to the qualities the excepted products must possess and by reference to the list promulgated by the Minister.

*23 75. Viewing the measure as an integrated whole, we see that it lays down "characteristics" for all products that might contain asbestos, and we see also that it lays down the "applicable administrative provisions" for certain products containing chrysotile asbestos fibres which are excluded from the prohibitions in the measure. Accordingly, we find that the measure is a "document" which "lays down product characteristics ... including the applicable administrative provisions, with which compliance is mandatory." For these reasons, we conclude that the measure constitutes a "technical regulation" under the TBT Agreement.

76. We, therefore, reverse the Panel's finding, in paragraph 8.72(a) of the Panel Report, that the TBT Agreement "does not apply to the part of the Decree relating to the ban on imports of asbestos and asbestos-containing products because that part does not constitute a 'technical regulation' within the meaning of Annex 1.1 to the TBT Agreement."

77. We note, however - and we emphasize - that this does not mean that all internal measures covered by Article III:4 of the GATT 1994 "affecting" the "sale, offering for sale, purchase, transportation, distribution or use" of a product are, necessarily, "technical regulations" under the TBT Agreement. Rather, we rule only that this particular measure, the Decree at stake, falls within the definition of a