

of the many end-uses for chrysotile asbestos and PCG fibres which are not overlapping. Thus, we do not know what proportion of all end-uses for chrysotile asbestos and PCG fibres overlap. Where products have a wide range of end-uses, only some of which overlap, we do not believe that it is sufficient to rely solely on evidence regarding the overlapping end-uses, without also examining evidence of the nature and importance of these end-uses in relation to all of the other possible end-uses for the products. In the absence of such evidence, we cannot determine the significance of the fact that chrysotile asbestos and PCG fibres share a small number of similar end-uses.

*40 139. As we have already stated, Canada took the view, both before the Panel and before us, that consumers' tastes and habits have no relevance to the inquiry into the "likeness" of the fibres. [FN127] We have already addressed, and dismissed, the arguments advanced by Canada in support of this contention. [FN128] We have also stated that, in a case such as this one, where the physical properties of the fibres are very different, an examination of the evidence relating to consumers' tastes and habits is an indispensable - although not, on its own, sufficient - aspect of any determination that products are "like" under Article III:4 of the GATT 1994. [FN129] If there is no evidence on this aspect of the

nature and extent of the competitive relationship between the fibres, there is no basis for overcoming the inference, drawn from the different physical properties, that the products are not "like". However, in keeping with its argument that this criterion is irrelevant, Canada presented no evidence on consumers' tastes and habits regarding chrysotile asbestos and PCG fibres. [FN130]

140. Finally, we note that chrysotile asbestos fibres and the various PCG fibres all have different tariff classifications. While this element is not, on its own, decisive, it does tend to indicate that chrysotile and PCG fibres are not "like products" under Article III:4 of the GATT 1994.

141. Taken together, in our view, all of this evidence is certainly far from sufficient to satisfy Canada's burden of proving that chrysotile asbestos fibres are "like" PCG fibres under Article III:4 of the GATT 1994. Indeed, this evidence rather tends to suggest that these products are not "like products" for the purposes of Article III:4 of the GATT 1994.

2. Cement-based products containing chrysotile and PCG fibres

142. We turn next to consider whether cement-based products containing chrysotile asbestos fibres are "like" cement-based products containing PCG fibres under Article III:4 of the GATT 1994. We begin, once again, with physical properties. In terms of composition, the physical properties of the different cement-based products appear to be relatively similar. Yet, there is one principal and significant difference between these products: one set of cement-based products contains a known carcinogenic fibre, while the other does not. The Panel concluded that the presence of chrysotile asbestos fibres in cement-based products poses "an undeniable public health risk". [FN131]

143. The Panel stated that the fibres give the cement-based products their specific function - "mechanical strength, resistance to heat, compression, etc." [FN132] These functions are clearly based on the physical properties of the products. There is no evidence of record to indicate whether the presence of chrysotile asbestos fibres, rather than PCG fibres, in a particular cement-based product, affects these particular physical properties of the products. For instance, a tile incorporating chrysotile asbestos fibres may be more heat resistant than a tile incorporating a PCG fibre.

*41 144. In addition, there is no evidence to indicate to what extent the incorporation of one type of fibre, instead of another, affects the suitability of a