

158. According to Canada, the Panel deduced that there was a risk to human life or health associated with manipulation of chrysotile-cement products from seven factors. [FN144] These seven factors all relate to the scientific evidence which was before the Panel, including the opinion of the scientific experts. Canada argues that the Panel erred in law by deducing from these seven factors that chrysotile-cement products pose a risk to human life or health. [FN145]

159. Although Canada does not base its arguments about these seven factors on Article 11 of the DSU, we bear in mind the discretion that is enjoyed by panels as the trier of facts. In United States - Wheat Gluten, we said:

... in view of the distinction between the respective roles of the Appellate Body and panels, we have taken care to emphasize that a panel's appreciation of the evidence falls, in principle, "within the scope of the panel's discretion as the trier of facts". (emphasis added) In assessing the panel's appreciation of the evidence, we cannot base a finding of inconsistency under Article 11 simply on the conclusion that we might have reached a different factual finding from the one the panel reached. Rather, we must be satisfied that the panel has exceeded the bounds of its discretion, as the trier of facts, in its appreciation of the evidence. As is clear from previous appeals, we will not interfere lightly with the panel's exercise of its discretion. [FN146]

*45 160. In Korea - Alcoholic Beverages, we were faced with arguments that sought to cast doubt on certain studies relied on by the panel in that case. We stated:

The Panel's examination and weighing of the evidence submitted fall, in principle, within the scope of the Panel's discretion as the trier of facts and, accordingly, outside the scope of appellate review. This is true, for instance, with respect to the Panel's treatment of the Dodwell Study, the Sofres Report and the Nielsen Study. We cannot second-guess the Panel in appreciating either the evidentiary value of such studies or the consequences, if any, of alleged defects in those studies. Similarly, it is not for us to review the relative weight ascribed to evidence on such matters as marketing studies ... [FN147] (emphasis added)

161. The same holds true in this case. The Panel enjoyed a margin of discretion in assessing the value of the evidence, and the weight to be ascribed to that evidence. The Panel was entitled, in the exercise of its discretion, to determine that certain elements of evidence should be accorded more weight than other elements - that is the essence of the task of appreciating the evidence.

162. With this in mind, we have examined the seven factors on which Canada relies in asserting that the Panel erred in concluding that there exists a human health risk associated with the manipulation of chrysotile-cement products. We see Canada's appeal on this point as, in reality, a challenge to the Panel's assessment of the credibility and weight to be ascribed to the scientific evidence before it. Canada contests the conclusions that the Panel drew both from the evidence of the scientific experts and from scientific reports before it. As we have noted, we will interfere with the Panel's appreciation of the evidence only when we are "satisfied that the panel has exceeded the bounds of its discretion, as the trier of facts, in its appreciation of the evidence." [FN148] (emphasis added) In this case, nothing suggests that the Panel exceeded the bounds of its lawful discretion. To the contrary, all four of the scientific experts consulted by the Panel concurred that chrysotile asbestos fibres, and chrysotile-cement products, constitute a risk to human health, and the Panel's conclusions on this point are faithful to the views expressed by the four scientists. In addition, the Panel noted that the carcinogenic nature of chrysotile asbestos fibres has been acknowledged since 1977 by international bodies, such as the International Agency for Research on Cancer and the World Health Organization. [FN149] In these circumstances, we find that the Panel remained well within the bounds of its discretion in finding that chrysotile-cement products pose a risk to human life or health.