

regulation";

(b) whether the Panel erred in its interpretation and application of the term "like products" in Article III:4 of the GATT 1994 in finding, in paragraph 8.144 of the Panel Report, that chrysotile asbestos fibres are "like" PVA, cellulose and glass fibres, and in finding, in paragraph 8.150 of the Panel Report, that cement-based products containing chrysotile asbestos fibres are "like" cement-based products containing polyvinyl alcohol, cellulose and glass fibres;

(c) whether the Panel erred in finding that the measure at issue is "necessary to protect human ... life or health" under Article XX(b) of the GATT 1994, and whether, in carrying out its examination under Article XX(b) of the GATT 1994, the Panel failed to make an objective assessment of the matter under Article 11 of the DSU; and

(d) whether the Panel erred in its interpretation of Article XXIII:1(b) of the GATT 1994 in finding that that provision applies to a measure which falls within the scope of application of other provisions of the GATT 1994, and in finding that Article XXIII:1(b) applies to measures which pursue health objectives.

V. TBT Agreement

*19 59. Before the Panel, Canada claimed that the measure at issue is inconsistent with Articles 2.1, 2.2, 2.4 and 2.8 of the TBT Agreement. Each of these provisions applies solely to "technical regulations". Thus, a threshold issue in the examination of Canada's claims under the TBT Agreement is whether the measure at issue is a "technical regulation".

60. In addressing this threshold issue, the Panel examined the nature and structure of the measure to assess how the TBT Agreement might apply to it. For this examination, the Panel decided that it would be appropriate to examine the measure in two stages. First, the Panel examined "the part of the Decree prohibiting the marketing of asbestos and asbestos-containing products"; next, the Panel analyzed the "exceptions" in the Decree. [FN34] The Panel concluded that the part of the Decree containing the prohibitions is not a "technical regulation", and that, therefore, the TBT Agreement does not apply to this part of the Decree. [FN35] However, the Panel also concluded that the part of the Decree containing the exceptions does constitute a "technical regulation", and that, therefore, the TBT Agreement applies to that part of the Decree. On this basis, the Panel decided not to examine Canada's claims under the TBT Agreement because, it said, those claims relate solely to the part of the Decree containing the prohibitions, which, in the Panel's view, does not constitute a "technical regulation", and, therefore, the TBT Agreement does not apply. [FN36]

61. In concluding that the part of the Decree containing the prohibitions is not a "technical regulation", the Panel found that:

a measure constitutes a "technical regulation" if:

- (a) the measure affects one or more given products;
- (b) the measure specifies the technical characteristics of the product(s) which allow them to be marketed in the Member that took the measure;
- (c) compliance is mandatory. [FN37]

62. Canada appeals the Panel's finding that the TBT Agreement does not apply to the part of the Decree relating to the prohibitions on imports of asbestos and asbestos-containing products. According to Canada, the Panel erred in considering the part of the Decree relating to those prohibitions separately from the part of the Decree relating to the exceptions to those prohibitions, and, therefore, the Panel should have examined the Decree as a single, unified measure. Furthermore, Canada argues that the Panel erred in its interpretation of a "technical regulation", as defined in Annex 1.1 to the TBT Agreement, because, in Canada's