

FN40. Panel Report, para. 8.57. We note that the Panel stated that a "technical regulation" must apply to "identifiable" products (Panel Report, para. 8.38; emphasis added). However, the Panel went on to state that a "technical regulation" must apply to "given" products (Panel Report, para. 8.57; emphasis added). The Panel also noted that the measure does not "identify by name nor even by function or category" the products covered by the measure (Panel Report, para. 8.40; emphasis added). Thus, in parts of the Panel Report, the Panel appears to require that a "technical regulation" apply to given products rather than identifiable products.

FN41. Canada asserted that "chrysotile fibre has no use in its raw form; it serves as an input in the production of chrysotile materials" (Panel Report, paras. 3.418 and 3.439). This assertion is not contested by the European Communities.

FN42. Article 5 of the Decree characterizes a contravention of any aspect of Articles 1.I or 1.II as a "5 superth class offence".

FN43. Article 2.II of the Decree.

FN44. Article 2.I of the Decree.

FN45. Article 3.I of the Decree.

FN46. Article 3.II of the Decree limits the benefit of the exception to activities that have been the subject of the necessary formalities.

FN47. Panel Report, para. 8.69.

FN48. See, for instance, Appellate Body Report, United States - Gasoline, supra, footnote 15, at 18 ff; Appellate Body Report, Canada - Certain Measures Concerning Periodicals ("Canada - Periodicals"), WT/DS 31/AB/R, adopted 30 July 1997, DSR 1997:I, 449, at 469 ff; Appellate Body Report, EC Measures Concerning Meat and Meat Products (Hormones) ("European Communities - Hormones"), WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, paras. 222 ff; Appellate Body Report, European Communities - Measures Affecting the Importation of Certain Poultry Products, WT/DS69/AB/R, adopted 23 July 1998, paras. 156 ff; Appellate Body Report, Australia - Measures Affecting Importation of Salmon ("Australia - Salmon"), WT/DS18/AB/R, adopted 6 November 1998, paras. 117 ff, 193 ff and 227 ff; Appellate Body Report, United States - Shrimp, supra, footnote 14, paras. 123 ff; Appellate Body Report, Japan - Measures Affecting Agricultural Products, WT/DS76/AB/R, adopted 19 March 1999, paras. 112 ff; Appellate Body Report, United States - Tax Treatment for "Foreign Sales Corporations", WT/DS108/AB/R, adopted 20 March 2000, paras. 133 ff; Appellate Body Report, Canada - Measures Affecting the Export of Civilian Aircraft, Recourse by Brazil to Article 21.5 of the DSU, WT/DS 70/AB/RW, adopted 4 August 2000, PARAS. 43 FF; and Appellate Body Report, United States - Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities ("United States - Wheat Gluten"), WT/DS166/AB/R, adopted 19 January 2001, paras. 80 ff and 127 ff.

In addition, after modifying the panel's reasoning, we have, on occasion, applied our interpretation of the legal provisions at issue to the facts of the case (see, for instance, Appellate Body Report, Argentina - Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items, WT/DS56/AB/R, adopted 22 April 1998,