

protection by France is a "halt" to the spread of asbestos-related health risks. By prohibiting all forms of amphibole asbestos, and by severely restricting the use of chrysotile asbestos, the measure at issue is clearly designed and apt to achieve that level of health protection. Our conclusion is not altered by the fact that PCG fibres might pose a risk to health. The scientific evidence before the Panel indicated that the risk posed by the PCG fibres is, in any case, less than the risk posed by chrysotile asbestos fibres, [FN160] although that evidence did not indicate that the risk posed by PCG fibres is non-existent. Accordingly, it seems to us perfectly legitimate for a Member to seek to halt the spread of a highly risky product while allowing the use of a less risky product in its place. In short, we do not agree with Canada's third argument.

169. In its fourth argument, Canada asserts that the Panel erred in finding that "controlled use" is not a reasonably available alternative to the Decree. This last argument is based on Canada's assertion that, in United States - Gasoline, both we and the panel held that an alternative measure "can only be ruled out if it is shown to be impossible to implement." [FN161] We understand Canada to mean by this that an alternative measure is only excluded as a "reasonably available" alternative if implementation of that measure is "impossible". We certainly agree with Canada that an alternative measure which is impossible to implement is not "reasonably available". But we do not agree with Canada's reading of either the panel report or our report in United States - Gasoline. In United States - Gasoline, the panel held, in essence, that an alternative measure did not cease to be "reasonably" available simply because the alternative measure involved administrative difficulties for a Member. [FN162] The panel's findings on this point were not appealed, and, thus, we did not address this issue in that case.

170. Looking at this issue now, we believe that, in determining whether a suggested alternative measure is "reasonably available", several factors must be taken into account, besides the difficulty of implementation. In Thailand - Restrictions on Importation of and Internal Taxes on Cigarettes, the panel made the following observations on the applicable standard for evaluating whether a measure is "necessary" under Article XX(b):

The import restrictions imposed by Thailand could be considered to be "necessary" in terms of Article XX(b) only if there were no alternative measure consistent with the General Agreement, or less inconsistent with it, which Thailand could reasonably be expected to employ to achieve its health policy objectives. [FN163] (emphasis added)

*48 171. In our Report in Korea-Beef, we addressed the issue of "necessity" under Article XX(d) of the GATT 1994. [FN164] In that appeal, we found that the panel was correct in following the standard set forth by the panel in United States - Section 337 of the Tariff Act of 1930:

It was clear to the Panel that a contracting party cannot justify a measure inconsistent with another GATT provision as "necessary" in terms of Article XX(d) if an alternative measure which it could reasonably be expected to employ and which is not inconsistent with other GATT provisions is available to it. By the same token, in cases where a measure consistent with other GATT provisions is not reasonably available, a contracting party is bound to use, among the measures reasonably available to it, that which entails the least degree of inconsistency with other GATT provisions. [FN165]

172. We indicated in Korea - Beef that one aspect of the "weighing and balancing process ... comprehended in the determination of whether a WTO-consistent alternative measure" is reasonably available is the extent to which the alternative measure "contributes to the realization of the end pursued". [FN166] In addition, we observed, in that case, that "[t]he more vital or important [the] common interests or values" pursued, the easier it would be to accept as "necessary" measures designed to achieve those ends. [FN167] In this case, the objective pursued by the