

the compatibility with the TBT Agreement of the part of the Decree relating to exceptions, the Panel refrains from reaching any conclusion with regard to the latter.

(b) ... chrysotile asbestos fibres as such and fibres that can be substituted for them as such are like products within the meaning of Article III:4 of the GATT 1994. Similarly, the Panel concludes that the asbestos-cement products and the fibro-cement products for which sufficient information has been submitted to the Panel are like products within the meaning of Article III:4 of the GATT 1994.

(c) With respect to the products found to be like, the Panel concludes that the Decree violates Article III:4 of the GATT 1994.

(d) However, ... the Decree, insofar as it introduces a treatment of these products that is discriminatory under Article III:4, is justified as such and in its implementation by the provisions of paragraph (b) and the introductory clause of Article XX of the GATT 1994.

(e) Finally, ... Canada has not established that it suffered non-violation nullification or impairment of a benefit within the meaning of Article XXIII:1(b) of the GATT 1994. [FN5]

5. Having found that the Decree is subject to, and inconsistent with, the obligations set forth in Article III:4 of the GATT 1994, the Panel did not deem it necessary to examine the claims of Canada under Article XI of the GATT 1994. [FN6]

6. On 23 October 2000, Canada notified the Dispute Settlement Body (the "DSB") of its decision to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, pursuant to Article 16.4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), and filed a Notice of Appeal with the Appellate Body pursuant to Rule 20 of the Working Procedures for Appellate Review (the "Working Procedures"). [FN7] On 16 November 2000, Canada filed an appellant's submission. [FN8] On 21 November 2000, the European Communities filed an other appellant's submission. [FN9] On 1 December 2000, Canada and the European Communities each filed an appellee's submission. [FN10] On the same day, Brazil and the United States each filed a third participant's submission. [FN11]

7. On 21 November 2000, the Appellate Body received a letter from Zimbabwe indicating its interest in attending the oral hearing in this appeal. Zimbabwe participated in the proceedings before the Panel as a third party which had notified its interest to the DSB under Article 10.2 of the DSU, but it did not file a third participant's submission in the appeal. No participant or third participant objected to Zimbabwe's request. On 15 December 2000, the Members of the Division hearing this appeal informed Zimbabwe, the participants and third participants, that Zimbabwe would be allowed to attend the oral hearing as a passive observer.

*4 8. On 20 December 2000, the Appellate Body informed the DSB that, due to the exceptional workload of the Appellate Body, and in light of the agreement of the participants, Canada and the European Communities, the Appellate Body Report in this appeal would be circulated to WTO Members no later than Monday, 12 March 2001. [FN12]

9. The oral hearing in the appeal was held on 17 and 18 January 2001. [FN13] The participants and the third participants presented oral arguments and responded to questions put to them by Members of the Division hearing the appeal.

II. Arguments of the Participants and the Third Participants

A. Claims of Error by Canada - Appellant