PLAINTIFF'S EXHIBIT

GP-1432

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

DATE: 23 MAY 1977

TO : Francine Shacter, TAD/OSCA
Through: Assoc. Exec. Dir. for Compliance and Enforcement
Through: Director, Division of Inspection and Enforcement

FROM : Charles M. Jacobson, BCMI

SUBJECT: Commission Briefing on Proposed Ban of Patching Compounds and Artificial Fireplace Log Ashes Containing Asbestos

As we indicated in our memorandum of May 9, 1977, there are two aspects of the ban on the asbestos containing articles which are a concern to us from a compliance and enforcement standpoint. These are the questions of a prospective versus a retroactive ban and a finite level of asbestos at which products would be considered banned.

We would urge the Commission to propose that the effective date be prospective and ban only those products manufactured after the effective date. This is based on the considerations that the products which will be subject to this ban represent only a small portion of the consumers total exposure to asbestos fibers. Even with this ban in place, it is not going to reduce the consumer exposure to asbestos fibers from joint compounds which are already in place, fireplace log ashes which are already in use, asbestos from automobile brake shoes, and all other sources of occupational, environmental, and consumer product exposures to asbestos. We would also anticipate that through the rulemaking process of proposal, reviewing comments, promulgating a final order, with some future effective date that the affected industry will begin making the conversions fairly early, resulting in the amount of material on the market containing asbestos being significantly reduced by the effective date. To ban the offering for sale of anything after the effective date would result in a need to purge the marketplace from those limited numbers of items which may exist at that time. This would place a tremendous enforcement burden on the Commission in that we would have to enforce a ban which would stop thousands of retail outlets from continuing to sell products already on their shelves as opposed to the responsibility for seeing that only a limited number of manufacturers have ceased manufacturing these products. Even if we are successful in stopping all retail sales, we doubt that it could be demonstrated that in the total asbestos picture, there would be any significant amount of consumer protection attained over and above that which would be attained by stopping the manufacture and future marketing of these products.

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Another consideration in the issue of a prospective versus a retroactive ban is the nature of the hazard posed by asbestos. While an acute hazard may well warrant a retroactive banning situation, a chronic hazard, based upon long term exposure, would not appear to justify a retroactive ban. It is doubtful that the economic impact upon the industry or serious resource committment on the part of the agency to enforce a retroactive ban is justified if in fact the hazard presented by asbestos is chronic rather than acute in nature. An examination of our experiences with Tris may be helpful in ascertaining practical problems with a retroactive ban involving a chronic hazard.

Since asbestos is a ubiquitous mineral which appears in many forms and is derived from many sources, we would suspect that almost any product could have the potential of at least carrying some asbestos contamination even though asbestos is not added as an ingredient. Therefore, we feel that the final ban on the above mentioned products containing asbestos should be based on some finite level of asbestos at which they will be defined as banned. We are not aware of how this could be defined at this time. However, we do not feel that that is reason to hold up the proposal of the ban. If we have no level available to include in the proposal we would then suggest that the proposal solicite comments from interested parties in an attempt to establish such a level in the final order.