

**EUROPEAN COMMUNITIES – MEASURES AFFECTING ASBESTOS
AND PRODUCTS CONTAINING ASBESTOS**

Request for the Establishment of a Panel by Canada

The following communication, dated 8 October 1998, from the Permanent Mission of Canada to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 6.2 of the DSU.

With reference to document WT/DS135/1 of 28 May 1998 containing a request for consultations addressed to the European Communities concerning certain measures taken by France for the prohibition of asbestos and products containing asbestos, I inform you herewith that consultations took place on 8 July 1998 in Geneva, during which the parties agreed to meet once again. However, the parties were unable to agree on a date for the resumption of the consultations.

Since more than 60 days have elapsed since the date of receipt by the European Communities of the request for consultations, and since the consultations have failed to resolve the dispute satisfactorily, Canada will be submitting a request for the establishment of a panel to the next meeting of the Dispute Settlement Body. Canada refers, in this connection, to Article XXIII of the GATT 1994, Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures, Article 14 of the Agreement on Technical Barriers to Trade and Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

In view of the above, Canada requests the inclusion in the Agenda of the next meeting of the Dispute Settlement Body, scheduled for 21 October 1998, of a request for the establishment of a panel to examine the French measure concerning the prohibition of asbestos and products containing asbestos, and the circulation to Members of the attached communication.

**EUROPEAN COMMUNITIES – MEASURES AFFECTING
ASBESTOS AND PRODUCTS CONTAINING ASBESTOS**

Request for the establishment of a panel pursuant to Article XXIII of the GATT 1994, Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures, Article 14 of the Agreement on Technical Barriers to Trade and Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

On 28 May 1998, the Government of Canada requested consultations with the European Communities concerning certain measures taken by France prohibiting asbestos and products containing asbestos, and concerning the general asbestos regulations in force in France. These measures and regulations include, but are not limited to, Decree No. 96-1133 of 24 December 1996 entitled "Decree Banning Asbestos, Issued Pursuant to the Labour Code and the Consumer Code". In conformity with Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, this request was distributed to all Members on 3 June 1998 (WT/DS135/1).

The prohibition by France of, *inter alia*, the manufacture, processing, import, placing on the domestic market, possession for sale, offering, sale or transfer on any ground of asbestos and any product containing asbestos severely damages Canada's economic interests, and in particular its profits from international trade in chrysotile asbestos.

Consultations were initiated on 8 July 1998 in Geneva. Canada wanted to know the reasons why France had banned asbestos and products containing asbestos and to try to convince the European Communities that the French ban was unjustifiable. At the same time, Canada was seeking to recover the benefits accruing to it under the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement") which were nullified or impaired as a result of the French ban. During of these consultations, Canada and the European Communities agreed to meet once again in the Autumn of 1998. However, it has not been possible to agree on a mutually acceptable date. Canada can only report, with regret, that the consultations failed to produce a solution that could satisfy its interests, and there are no indications that further consultations are likely to lead to a satisfactory settlement of the issue.

Consequently, pursuant to Article XXIII of the GATT 1994, Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures, Article 14 of the Agreement on Technical Barriers to Trade, and Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Canada hereby requests that a panel be established at the next meeting of the Dispute Settlement Body scheduled for 21 October 1998.

Canada requests that the Panel consider and find that Decree No. 96-1133 and such other measure as Canada might indicate:

- (a) Are inconsistent with Articles 2 and 5 of the Agreement on the Application of Sanitary and Phytosanitary Measures;
- (b) are inconsistent with Article 2 of the Agreement on Technical Barriers to Trade;
- (c) are inconsistent with Article XI of the GATT 1994;
- (d) are inconsistent with Article III of the GATT 1994;
- (e) under Article XXIII(1)(b) of the GATT 1994, nullify or impair one or several advantages accruing to Canada directly or indirectly under the WTO Agreement, or

impede the attainment of an objective of the Agreement, owing to the fact that the banning of asbestos by France is applied whether or not it conflicts with the said Agreement.

Canada requests the Dispute Settlement Body to establish the panel with the standard terms of reference as set out in Article 7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. Canada further asks that this request for the establishment of a panel be included in the Agenda of the meeting of the Dispute Settlement Body scheduled for 21 October 1998.
