

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

Notification of an Appeal by Canada under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 23 October 2000, sent by Canada to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16.4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (hereinafter the "Understanding") and Rule 20 of the *Working Procedures for Appellate Review*, the Government of Canada formally notifies the Dispute Settlement Body of its decision to appeal certain issues of law covered in the Panel Report on *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* (WT/DS135/R of 18 September 2000) and legal interpretations developed by the Panel.

The Government of Canada submits that the Panel committed errors of law and erred in its interpretation of Annex 1.1 of the *Agreement on Technical Barriers to Trade* (hereinafter the TBT Agreement). These errors relate to or derive from the following conclusions of the Panel:

1. "The TBT Agreement does not apply to the part of the Decree relating to the ban on imports of asbestos and asbestos-containing products because that part does not constitute a 'technical regulation' within the meaning of Annex 1.1 to the TBT Agreement."¹
2. "The TBT Agreement applies to the part of the Decree relating to exceptions to the ban on imports of asbestos and asbestos-containing products because that part constitutes a 'technical regulation' within the meaning of Annex 1.1 to the TBT Agreement. This legal characterization, however, does not affect the legal characterization of the part of the Decree banning asbestos nor our consideration of the rest of this case because Canada did not make any specific claims regarding the exceptions to the general ban."²

The Government of Canada respectfully requests the Appellate Body to reverse the findings and conclusions of the Panel concerning the provisions of the TBT Agreement referred to above and to modify accordingly the recommendations of the Panel. Assuming that the TBT Agreement applies, the Government of Canada respectfully requests the Appellate Body to examine Canada's contention that the Decree violates paragraphs 1, 2, 4 and 8 of Article 2 of the TBT Agreement.

¹Report of the Panel, Section VIII.D.3 and Section IX.

²*Idem*.

The Government of Canada further submits that the Panel committed errors of law and erred in its interpretation of paragraph XX(b) of the *General Agreement on Tariffs and Trade of 1994* (hereinafter the GATT 1994). These errors relate to or derive from the following conclusions of the Panel:

1. "[T]he Panel concludes that the Decree, insofar as it introduces a treatment of [the products found to be like] that is discriminatory under Article III:4 [of the GATT 1994], 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."³

The Government of Canada respectfully requests the Appellate Body to reverse the findings and conclusions of the Panel concerning the provisions of the GATT 1994 referred to above and to modify accordingly the recommendations of the Panel.

³Report of the Panel, Section IX.