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WORLD TRADE ORGANIZATION

Topic: *WTO Tribunal Upholds French Asbestos Ban, But Uses Damaging Reasoning*

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On September 18, 2000, a World Trade Organization (WTO) Dispute Settlement Panel made up of three trade lawyers upheld a French ban on asbestos. The Panel ruled that the ban restricts trade but is nevertheless permissible because it qualifies for a GATT-WTO exception allowing countries to maintain policies that are necessary to protect human health.[1] The decision is the first WTO panel decision to find the public health exception applicable in any trade case under the rules of the General Agreement on Tariffs and Trade (GATT) or the WTO.[2] By allowing the French asbestos ban, the Panel made it less likely that existing and future asbestos bans in Europe will be threatened under WTO rules. However, the Panel's flawed reasoning also makes it more likely that health and environmental measures in general will be at greater risk of being challenged or overruled in the WTO.

Canada Challenged French Ban to Protect Asbestos Sales to Developing Countries

In December 1996, the government of France banned asbestos and products containing asbestos as posing health risks to workers and consumers.[3] Decree No. 96-1133, which took effect on January 1, 1997, made it illegal to import or sell varieties of asbestos, including chrysotile or white asbestos, subject to a few minor exceptions.[4] Asbestos is currently used in industrial and consumer products such as seals, gaskets, brake and

clutch linings, and cement products such as pipes and roofing materials.[5]

France enacted its ban in order to protect consumers and workers from the health risks posed by asbestos,[6] which the International Agency for Research on Cancer and the World Health Organization both listed as a carcinogen in 1977.[7] France acted on evidence that asbestos causes lung cancers and other often-fatal respiratory diseases.[8] According to the EU, asbestos is responsible for the deaths of approximately 2,000 people in France each year.[9] Nine out of the fifteen EU nations have banned asbestos, and the EU itself enacted in 1999 a rule requiring that all EU nations ban asbestos by 2005.[10]

On October 8, 1998, Canada challenged the French asbestos ban in the WTO, arguing that the ban violates WTO rules prohibiting WTO member states from maintaining regulatory policies that restrict trade unless they can prove that the policy is the least trade-restrictive alternative and therefore is necessary.[11] Canada, which is the world's second-largest asbestos producer and its largest exporter,[12] argued that asbestos is safe if used according to "controlled use" policies.[13] Such policies are similar to international standards established by the International Organization on Standards (ISO), which has been criticized as being industry-dominated.[14] Canada accordingly argued that France's ban is unnecessary and WTO-illegal.[15]

The central motivation for Canada's challenge was not the loss of the French market, which accounted for only five percent of Canada's dwindling asbestos exports. Rather, Canada feared that if France banned asbestos, a number of developing countries that buy Canadian asbestos might follow France's lead, thereby depriving Canada of its best markets—and its only growing markets—for asbestos.[16] Canada also hoped that a successful challenge of the French ban might force other WTO member states to revoke their bans, which had caused drops in asbestos sales in recent years.[17] Additionally, continued asbestos production would greatly benefit the development of Canada's magnesium industry because asbestos tailings are the cheapest source of magnesium.[18]

Panel Uses Illogical Reasoning

The WTO asbestos case was very politically charged. In light of the overwhelming evidence of the toxicity and carcinogenicity of asbestos and the broad public view in numerous countries that health risks from asbestos are unacceptable, it would have been surprising if the Panel had dared to overturn the French ban. Such a decision would have subjected the WTO's already-damaged reputation to another major blow. However, the applicable WTO text, the Agreement on Technical Barriers to Trade (WTO TBT), is so skewed against health measures that a strict interpretation of its terms would require the asbestos ban to be invalidated. Thus, the main question facing the WTO panel was how to arrive at a politically surviveable outcome despite anti-health WTO rules. Specifically, the Panel had to choose whether to apply Article 2 of the WTO TBT, which covers technical regulations, or whether it would apply the more general provisions of GATT and, in particular, Articles III and XX.

To decide which WTO provisions to employ, the Panel had to determine whether or not the French asbestos ban is a technical regulation, which would make it subject to analysis under the WTO TBT. The WTO TBT identifies a technical regulation as a "[d]ocument which lays down product characteristics or their related process and production methods . . . ."[19] The Panel looked at the decree as a whole and agreed with the EU, finding that the decree constituted a general prohibition on asbestos, not a regulation mandating or prohibiting any characteristics for any specific products. The Panel thus held that the decree is not a technical regulation, that the WTO TBT therefore does not apply, and that the Panel would evaluate the decree under the terms of GATT.[20] In choosing to apply GATT, the Panel made the first of two substantial errors of analysis that may set damaging precedents for health and environmental protection laws.

The determination to apply GATT worried consumer and environmental advocates for a number of reasons. First, the Panel blocked what could have been the first successful use of the WTO TBT's "legitimate objective" defense to a trade restriction claim. The WTO TBT permits trade-restrictive regulations if they are "not . . . more trade-restrictive than necessary to fulfill a legitimate objective."[21] Because the WTO TBT specifically allows that "protection of human health or safety, animal or plant life or health, or the environment"[22] is a legitimate objective, the issues then would have been whether any less trade-restrictive alternative means of protecting human health is available to France, and whether France could justify not using the pro-controlled-use international standard.

Canada argued that international standards call for the implementation of a policy of controlled use, and

that such a policy would be a less-trade-restrictive alternative. However, the Panel sidestepped the unfavorable WTO TBT provisions on international standards harmonization and focused only on whether the ban was necessary under the chapeau of Article XX(b) of GATT. The Panel found that asbestos poses an "undeniable public health risk,"[23] and that controlled use is not a reasonable alternative to a complete ban because it cannot protect all of those put at risk. Thus, it found that the French ban was the least trade-restrictive way in which France could protect its citizens.

If the Panel could make this finding of necessity under GATT, then why did it not simply make that same finding under the WTO TBT? The Panel's convoluted reasoning and its refusal to apply the health protection provisions of the WTO TBT make sense only if the Panel's goal was to limit the trade-negative effects of the case while achieving a politically-determined outcome. By upholding the French ban under GATT instead of under the WTO TBT, the Panel avoided clarifying the meaning of the term "technical regulation" under the WTO TBT and avoided providing member states with an example of how a TBT-legal health protection measure might look—two things that would assist nations in crafting and maintaining regulations to protect public health. This use by the Panel of blatantly outcome-driven reasoning supports claims that the WTO's dispute resolution system is trade-biased and should not be allowed to pass judgment on national health, safety, and environmental protection measures.

Second, by analyzing the health protection aspects of the French ban under GATT instead of under the WTO TBT, the Panel shifted the burden of proof from Canada to the EU. The decision effectively made the French ban guilty until proven innocent. Under WTO TBT, the EU would have employed the legitimate objective defense, and Canada, as challenger, would have had the difficult burden of showing that a controlled-use policy removes the health risks from asbestos use, and that a complete ban is therefore an unnecessary obstacle to trade. GATT, however, imposed that burden upon the EU. After the Panel found that the decree violated GATT's national treatment requirement, the EU had to show controlled-use to be *ineffective* in order for the ban to qualify under GATT's exception for the protection of human health.

Because it was not difficult for the EU to convince the Panel of the practical impossibility of applying a controlled-use program to all people who might be exposed to asbestos, this shift of the burden of proof did not change the ultimate outcome of this particular case. But in cases in which the scientific evidence or facts are not as favorable to the defending party, such a shift of the burden of proof might make all the difference and could make an important health measure hard to sustain. Moreover, although GATT Article XX(b) and the preambular language of the WTO TBT purport to affirm the importance of protecting the environment and human health, this shift demonstrates that those statements are meaningless.[24] Indeed, the Panel's tortured logic contradicts its own statement that "each Member is free to adopt the health policies that it deems appropriate and to give each such policy the priority it deems necessary."[25]

Toxic Products Judged Identical to Nontoxic Products

The Panel made its second major error when it ruled that asbestos is a "like product" in comparison to nontoxic asbestos substitutes. GATT requires that WTO member countries' regulatory systems treat imports the same as equivalent or "like" domestic products.[26] Therefore, the issue was whether there exist any French products that are like imported Canadian asbestos and that were not banned by the decree—*i.e.*, discriminated against by the decree. Canada argued that although France does not produce any asbestos itself, asbestos substitutes produced by France are equivalent in function to Canadian asbestos.[27] Thus, Canada claimed that the asbestos-only ban fails to give "national treatment" to Canadian products because it bans them but does not ban French products.

Stating that there could be no "precise and absolute definition" of like products, the Panel proceeded to apply its own arbitrary and highly imbalanced definition and found that toxic asbestos and nontoxic asbestos substitutes were equivalent. Although the Panel admitted that past WTO cases mentioned several interdependent criteria for judging the equivalence of products,[28] it accorded very little weight to any of these prior considerations except for a product's end uses or functionality. Using strained reasoning, the Panel ignored the asbestos ban's central purpose of protecting human health and excluded health risk or toxicity as a criterion. The Panel also ignored the clearly nondiscriminatory nature of the ban, which treated all asbestos the same regardless of its origin. In doing so, the Panel lent support to an untenably broad definition of like products.

Unlike most courts of law, WTO dispute

resolution panels need not follow the reasoning or decisions of previous panels. Thus, the precedential value of panel holdings is less than in real courts, and it is not guaranteed that future panels will apply this panel's erroneous like products analysis. In practice, however, panels do draw heavily upon prior panel decisions for interpretations of WTO agreements, as this panel did when it based its like products analysis on the overly broad definition used by a 1987 panel, which found wine, sparkling wine, gin, vodka, whisky, brandy, and liqueurs to be the same.[29] The current Panel decision therefore increases the likelihood that future panels will apply unreasonably trade-biased rules to national measures contested under GATT.

Although consumer and public health advocates sought the validation of the French asbestos ban, they note that the Panel's contorted reasoning sets an unfavorable precedent that may endanger the ability of nations to adopt and maintain important health and environmental measures.[30] The decision also highlights the inappropriateness of submitting national regulatory measures to the trade-biased WTO dispute resolution system, which was designed with trade facilitation as its primary objective.

ENVIRONMENT

Topic: *Nuclear Materials Harmonization Heats Up*

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Faced with growing challenges in an increasingly competitive global marketplace, the nuclear industry is pushing for international standards for the transportation, disposal, and "recycling" of nuclear materials. The industry goal is to promote international trade in nuclear materials and to remove barriers to dumping nuclear waste where it is not wanted. Nuclear materials include high- and low-level nuclear waste, byproduct material like medical waste, and medical isotopes used in chemotherapy and other medical treatments.

The International Atomic Energy Agency (IAEA) is an international body that was founded in 1957 under the auspices of the United Nations. IAEA serves as the world's "central intergovernmental forum for scientific and technical cooperation in the nuclear field."[31] Within the United Nations complex, IAEA claims authority in setting standards for regulation on issues of radiation protection and nuclear safety. The Agency was originally mandated to promote nuclear technology internationally, which accounts for its tendency to reflect a pro-nuclear bias in both its structure and standards.

At the IAEA world conference held recently in Cordoba, Spain, Director General Dr. Mohammed El Baradei discussed the Agency's goals with regard to nuclear waste. Dr. Baradei outlined the Agency's efforts to encourage its 130 member states (including the United States) to adopt international standards for nuclear waste transportation, release of radioactive materials from regulatory control, and nuclear waste disposal, as well as international enforcement of these standards.

This push for international nuclear materials standards could have a significant effect on U.S. regulations. For example, the United States currently does allow some release of radioactive materials from regulatory control on a case-by-case basis. However, in order to be consistent with international trends, the Nuclear Regulatory Commission (NRC) is now evaluating how to streamline and expand the amount and rate of radioactive waste being released. NRC commissioners were briefed on this issue by staff and stakeholders on May 2 and 9, 2000, and NRC is currently considering a potential rulemaking.

The deregulation of nuclear material is strongly opposed by nuclear and environmental activist groups because it could expose millions of people to low-level radiation. The precise long-term health effects of such exposure remain largely unknown, suggesting at a minimum a need for a precautionary approach. In addition, the steel industry and several labor unions oppose

deregulation. They note that allowing radioactive materials to enter the flow of commerce could wreak havoc with production lines, which are currently equipped to detect radioactive material and stop production when they are found.

Nevertheless, the U.S. Department of Energy (DOE) strongly supports deregulation because DOE stands to raise funds by selling its contaminated materials for use in the consumer marketplace. The move toward release also has support within NRC because of the draw of international nuclear commerce.

As IAEA extends its influence throughout the world, other U.S. regulations could be implicated. For example, IAEA uses different waste classifications than U.S. agencies. IAEA categorizes waste as "Exempt," "Low- and Intermediate-Level", or "High-Level." The Exempt Waste class includes those radioactive materials that contain "low concentrations of radionuclides" and which IAEA considers to be safe for release into the public domain.[32] The United States currently does not allow waste to be classified in this way.[33] U.S. classifications include only "Low-Level Waste" and "High-Level Waste," although there are distinctions within the Low-Level Waste category between A, B, C, and Greater than Class C wastes. Unlike the IAEA Exempt Waste category, none of the U.S. classifications allow material to be released routinely into the marketplace.

With regard to transportation of nuclear materials, both the Department of Transportation (DOT) and NRC are considering rule changes in order to harmonize U.S. regulations with new international standards. On October 23, 2000, DOT posted a notice of proposed rulemaking to revise its Hazardous Materials Regulations pertaining to the transportation of radioactive materials.[34] In conjunction with this process, NRC is also proposing a rulemaking to revise its licencing requirements for transportation packages and procedures.[35]

Both rule changes would bring U.S. regulations into compliance with the standards issued in the IAEA document called *Regulations for the Safe Transport of Radioactive Materials, 1996 Edition* (ST-1). This document was drafted and reviewed by international panels of experts representing the nuclear industry and government regulatory agencies in IAEA member countries, and then adopted by the IAEA Board of Governors in 1996. Contrary to NRC rulemaking procedure, the IAEA process did not include a forum for public participation or consideration of a cost-benefit analysis. IAEA member countries are being urged to adopt the ST-1 standards and harmonize any conflicting domestic regulations by 2001.[36]

In the United States, this harmonization would require a variety of technical changes to regulations governing the transport of radioactive materials, as specified by the proposed DOT and NRC rulemakings.[37] For example, the ST-1 standards require that radioactivity values of materials for transport be listed in SI (metric) units only, whereas previous IAEA and current U.S. standards allowed a combination of metric and English units. If adopted domestically, this change could result in unnecessary complications because metric measures are not the exclusive standard in the United States for other activities involving radioactive materials.

ST-1 also includes new standards for air transport of radioactive material. These require additional criticality evaluations for fissile or radioactive materials, identification of "Low Dispersable Materials" that can continue to be air-transported in Type B packages, and introduction of a new "Type C" category of package that is subject to more stringent tests. While these changes, would seem to enhance safety requirements if implemented in the United States, they may implicitly encourage the increased use of airlifts for the transport of radioactive materials. This scenario raises inherent safety concerns and accordingly has in some cases been subject to statutory restrictions in the United States.

Another harmonization issue relates to radionuclide exemption values. In the United States today, transport regulations for radioactive materials exempt low-level radioactive shipments with a concentration of less than 70 Bq/g. ST-1 standards introduce various exemption levels specific to each radionuclide. In general, the ST-1 maximum concentration levels for the "exempt materials" category ranges from 1 - 100 Bq/g. If U.S. standards were harmonized, this would bring into regulatory control certain radionuclides with ST-1 exemption levels less than 70 Bq/g, while deregulating others with ST-1 exemption levels greater than 70 Bq/g. According to a DOE analysis, harmonization would thereby result in stricter controls on 17% of radionuclides and more lenient standards for 44% as compared with current U.S. policy.[38] Adopting radionuclide-specific standards could also complicate enforcement procedures, particularly regarding shipments including a mixture of radionuclides with different specific exemption levels. More significantly, this change would

create a framework for the routine release from regulatory control of certain low-level contaminated materials, thus facilitating the drive to "recycle" radioactive waste into consumer goods in the international market.

Taken as a whole, there is no consensus among U.S. industry and agency stakeholders as to whether the changes required for harmonization would be beneficial either in terms of cost-savings, safety, or regulatory efficiency. Even the Nuclear Energy Institute, a lobbying group for the nuclear industry, is of the opinion that "ST-1 does not provide a substantial increase in safety and that the costs for its implementation will be significant."[39]

From a public interest perspective, it is clear that this proposed harmonization cannot be justified. As a matter of principle, it is unacceptable for our democratically accountable U.S. federal agencies to delegate decision making to a self-appointed, industry-biased international authority such as IAEA, which is neither accessible to the public nor responsive to the specific regulatory context within the United States. Rather, international standards should serve as guidelines regarding minimum standards without compromising more stringent domestic rules that restrict and regulate radioactive materials for the protection of public and environmental safety.

FEDERAL REGISTER ALERTS

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Department of Agriculture

Mycogen c/o Dow and Pioneer; Receipt of Petition for Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance and Glufosinate Herbicide Tolerance (APHIS)
65 Fed. Reg. 53976 (Sept. 6, 2000).
Notice and Request for Comments. Written comments are due on Nov. 6, 2000.

Asian Longhorned Beetle Regulations; Addition to Regulated Area (APHIS)
65 Fed. Reg. 54943 (Sept. 12, 2000).
Interim Rule and Request for Comments. Comments are due on Nov. 13, 2000.

Sharing Recall Information With State and Other Federal Government Agencies (FSIS)
65 Fed. Reg. 56503 (Sept. 19, 2000).
Proposed Rule. Comments are due on Nov. 20, 2000.

Codex Alimentarius Commission: Thirty-third Session of the Codex Committee on Food Hygiene
65 Fed. Reg. 57309 (Sept. 22, 2000).
Notice of Public Meeting and Request for Comments. Meeting on Friday, Oct. 6, 2000.

International Sanitary and Phytosanitary Standard-Setting Activities (APHIS)
65 Fed. Reg. 58038 (Sept. 27, 2000).
Notice and Request for Comments.

Codex Alimentarius Commission: Meeting of the Codex Committees on Natural Mineral Waters and Cocoa Products and Chocolate (FSIS)
65 Fed. Reg. 58729 (Oct. 2, 2000).
Notice of Public Meeting and Request for Comments. Public meeting on Oct. 17, 2000.

Availability of Draft Pest Risk Assessment for the Importation of Solid Wood Packing Materials Into the United States (APHIS)
65 Fed. Reg. 61301 (Oct. 17, 2000).
Notice and Request for Comments. Comments on the Draft Risk Assessment are due on Feb. 15, 2001.

Announcement of and Request for Comment Regarding Industry Petition on Hazard Analysis and Critical Control Point (HACCP) Petition (FSIS)
65 Fed. Reg. 63229 (Oct. 23, 2000).
Notice of re-opening of comment period. Comments must be received on or before Dec. 22, 2000.

Codex Alimentarius: Meetings of the Codex Committee on Food Import and Export Inspection and Certification Systems (FSIS)
65 Fed. Reg. 64418 (Oct. 27, 2000).
Notice of Public Meetings, Request for Comments. Meetings are on Nov. 7 and Nov. 21, 2000.

Department of State

Public Meeting to Discuss Progress on International Harmonization of Chemical Hazard Classification and Labeling
65 Fed. Reg. 61019 (Oct. 13, 2000).
Notice of Public Meeting. Meeting is on Oct. 24, 2000.

Public Meeting on An International Agreement in Prior Informed Consent for Certain Hazardous Chemicals and Pesticides
65 Fed. Reg. 63110 (Oct. 20, 2000).
Notice of Public Meeting. Meeting is on Oct. 25, 2000, from 10:00 a.m. to 12:00 p.m.

Department of Transportation

Air Worthiness Standards; Bird Ingestion (FAA)
65 Fed. Reg. 55847 (Sept. 14, 2000).
Final Rule.

Aviation Rulemaking Advisory Committee Transport Airplanes and Engine Issues— New Tasks (FAA)
65 Fed. Reg. 58304 (Sept. 28, 2000).
Notice of new task assignment(s) for the Aviation Rulemaking Advisory Committee (ARAC).

Draft Advisory Circular (AC) No. 120-29A, Criteria for Approval of Non-Precision, Category I and Category II Weather Minima for Takeoff, Approach, and Landing (FAA)
65 Fed. Reg. 61211 (Oct. 16, 2000).
Notice of Availability of Draft Circular. Comments are due on Oct. 31, 2000.

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions (RSPA)
65 Fed. Reg. 63293 (Oct. 23, 2000).
Notice of Proposed Rulemaking. Comments must be received by Dec. 22, 2000.

Harmonization Initiatives (FAA)
65 Fed. Reg. 63907 (October 25, 2000).
Notice of Public Meeting. Meetings are to be held on Nov. 28 and Nov. 30, 2000 at 10:30 a.m.

Aviation Rulemaking Advisory Committee Transport Airplanes and Engine Issues— New Tasks (FAA)
65 Fed. Reg. 64906 (Oct. 25, 2000).
Notice of new task assignment(s) for the Aviation Rulemaking Advisory Committee (ARAC).

Environmental Protection Agency

Harmonization of Treated Seed Policies and Requirements in Canada and the United States
65 Fed. Reg. 52752 (Aug. 30, 2000).
Request for Comments. Comments are due on Oct. 16, 2000.

Assessment of Scientific Information Concerning StarLink Corn Cry9C Bt Corn Plant-Pesticide
65 Fed. Reg. 65245 (Oct. 31, 2000).
Notice and Request for Comments. Comments must be received on or before Nov. 27, 2000.

Food and Drug Administration

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body; Partial Stay of Compliance
65 Fed. Reg. 58346 (Sept. 29, 2000).
Final Rule; Partial Stay of Compliance. Rule is effective on Oct. 30, 2000. Submit comments by Oct. 30, 2000.

Mutual Recognition Agreement, Medical Device Annex; Confidence Building Activities: Availability of Draft Guidances
65 Fed. Reg. 59006 (Oct. 3, 2000).
Request for Comments. Comments are due on Nov. 2, 2000.

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medical Products (VICH)
65 Fed. Reg. 62723 (Oct. 19, 2000).
Notice and Request for Comments. Comments on the draft guidance are due on Dec. 18, 2000.

Office of the United States Trade Representative

Trade Policy Staff Committee; Request for Public Comment on Draft Environmental Review of Proposed United States-Jordan Free Trade Agreement
65 Fed. Reg. 58341 (Sept. 28, 2000).
Notice. Comments on the reviews are due on Oct. 11, 2000.

NOTES

1. WTO Dispute Settlement Panel Report WT/DS135/R, September 18, 2000, on file with Public Citizen, *available in* <http://www.wto.org/english/tratop_e/dispu_e/distab_e.htm> [hereinafter Panel Report].

2. On October 23, 2000, Canada began the process of appealing the decision to the WTO's Appellate Body.

3. Decree No. 96-1133 of Dec. 24, 1996, Official Journal of the French Republic, Dec. 26, 1996 [hereinafter Decree].

4. *Id*.

5. Jim Young, *Cancer for Sale*, In These Times, September 5, 1999, at 2.

6. *See* Decree, art. 1.

7. Panel Report, paras. 8.119, 8.186.

8. *Id.* at paras. 8.185–88.

9. *Interim Report Issued in Canada-France Asbestos Case*, ICTSD Bridges Weekly Trade News Digest, June 20, 2000, at 2, on file with Public Citizen, *available in* <http://www.ictsd.org/html/weekly/story1.20-06-00.htm> [hereinafter ICTSD].

10. Commission Directive 1999/77/EC, 1999 O.J. (L 207) 18.

11. Panel Report, para. 1.2; WTO Agreement on Technical Barriers to Trade, article 2.2., *available in* <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [hereinafter WTO TBT].

12. Young, *supra* note 5, at 1, 3.

13. Panel Report, para. 8.165.

14. *See*, *e.g.*, ISO 7337, on file with Public Citizen.

15. ICTSD, *supra* note 9, at 1, 2.

16. *Id*. at 2; Young, *supra* note 5, at 1.

17. Andrew Schneider & Carol Smith, *Canada Fiercely Defends Industry*, Seattle Post-Intelligencer, February 11, 2000.

18. *Id*.

19. WTO TBT, Annex 1:1. Canada argued that the French decree includes a ban on products based on their characteristic of containing asbestos, and that it therefore is a technical regulation and should be analyzed under the WTO TBT. On behalf of France, the EU asserted that the decree is a general prohibition on asbestos in any form, that it does not mention any specific products for which a characteristic is mandated or prohibited, and that it does not regulate process or production methods. Therefore, it lies outside the scope of the WTO TBT's specific coverage of regulations involving the characteristics of specified products, and comes instead under Articles I and III of GATT. Informed sources indicate that the EC may have argued against a WTO TBT analysis because it expected that the decree would have a better chance of surviving an Article III analysis than it would a WTO TBT analysis, and that the decree would survive Article III without even resorting to the human health exception in Article XX of GATT.

20. GATT, which is an updated version of the original General Agreement on Tariffs and Trade of 1947, imposes rules on trade in goods and is one of a number of agreements enforced by the WTO as constituted in the Uruguay Round of international trade negotiations.

21. WTO TBT, article 2.2.

22. *Id*.

23. Panel Report, para. 8.203.

24. *See* GATT, Article XX(b); WTO TBT, preamble para. 6 ("[r]ecognizing that no country should be prevented from taking measures necessary . . . for the protection of human, animal or plant life or health, of the environment . . ."); WTO Agreement on the Application of Sanitary and Phytosanitary Measures, preamble para. 1, *available in* <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [hereinafter WTO SPS] ("[r]eaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health . . . ; [d]esiring to improve the human health, animal health and phytosanitary situation in all Members").

25. Panel Report, para. 8.302.

26. Article III:4 of GATT states that "products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin." GATT, article III:4.

27. Asbestos substitutes include fibrous materials such as polyvinyl alcohol (PVA), glass, and cellulose, as well as nonfibrous materials such as cast iron, concrete, clay, and polyethylene.

28. The Panel listed the properties, nature, and quality of the products; their end uses in a given market; consumers' tastes and habits in relation to the products; and the tariff classifications of the products as criteria. Panel Report, paras. 8.112–13.

29. Panel Report, para. 8.124, *citing* WTO Dispute Resolution Panel Report in *Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, BISD 34S/84 (1987).

30. *See The EC/Canada Asbestos Case: Will the WTO "Choke" on Asbestos?*, Comment by the Center for International Environmental Law, World Wildlife Fund, and the Foundation for International Environmental Law & Development.

31. IAEA, *About the IAEA* (visited Dec. 15, 2000) <http://www.iaea.org/worldatom/About>.

32. Nuclear Regulatory Commission, Control of Solid Materials: Results of Public Meetings, Status of Technical Analysis, and Recommendations for Proceeding, SECY 00-0070, Mar. 23, 2000.

33. In 1992, Public Citizen's Critical Mass Energy and Environment Project defeated an effort by NRC to adopt a "below regulatory control" category for nuclear waste.

34. Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organizations Technical Instructions; Proposed, 65 Fed. Reg. 63293 (2000). Comments are due by Dec. 22, 2000 to Dockets Management System, U.S. Department of Transportation, Room PL-401, 400 7th Street S.W., Washington, DC 50590.

35. Major Revision to 10 CFR Part 71: Compatibility With ST-1--The IAEA Transportation Safety Standards--and Other Transportation Safety Issues, Issues Paper, and Notice of Public Meetings, 65 Fed. Reg. 44359 (2000), discussing 10 C.F.R. pt. 71.

36. International Atomic Energy Agency, Regulations for the Safe Transport of Radioactive Material, in Foreword (1996).

37. A complete summary of these changes, as well as related documents and comments, is available at the NRC Public Document Reading Room (2120 L St. NW, Washington, D.C.) or online at http://www.nrc.gov/NRC/ADAMS/index.html. For help with accessing these materials, contact NRC Reference Staff at 1-800-397-4209.

38. DOE comments on the proposed DOT rulemaking, June 29, 2000, Docket No. RSPA-99-6283.

39. Nuclear Energy Institute comments on the proposed DOT rulemaking, June 29, 2000, Docket No. RSPA-99-6283.