

## WTO asbestos ban hearing : update

The editorial to issue 13 of the *TUTB Newsletter* called attention to the importance of Canada's complaint against France's asbestos ban. No final verdict has yet been reached on the complaint, which is up before the World Trade Organization's (WTO) Dispute Settlement Body. However, leaks about the contents of the panel's report all point the same way. The report is due to be published in August, and will be examined in more detail as soon as it becomes available.

### The merits

Informed sources suggest that the report will find that France's asbestos ban does indeed constitute a barrier to trade, but not one that is covered by the rules of the Technical Barriers to Trade (TBT) Agreement. This means referring back to the older GATT rules, i.e., the collection of agreements on international trade concluded in the WTO's multilateral predecessor and taken over by WTO when it was set up. The panel will say that the asbestos ban violates the GATT trade rules by distorting competition between national products and imported products, but that the ban may be justified by being on public health grounds.

It seems likely that the WTO Dispute Settlement Body will adopt the report, so France could keep its asbestos ban in place without fear of trade reprisals in the WTO. It also makes it less likely that Canada will now complain to the WTO against the EU's own asbestos ban.

The immediate practical spin-offs of such a decision can only be welcomed. Canada knew full well that, whatever way the WTO's decision went, the EU asbestos market's days are numbered. Even in Canada, where official policy is to promote controlled use, the asbestos market has all-but collapsed; almost all the production is exported, mainly to Latin America and Asia. Significantly, the asbestos lobby has now turned its attention to the developing world (with a conference scheduled in New Delhi in November 2000). Canada's WTO complaint was an attempt to strongarm other countries who might be tempted to "drop asbestos". But it was also looking to solve internal problems - there is a strong body of Quebec nationalist opinion for which the defence of asbestos is a test of the federal government's readiness to stand up for the economic interests of Quebec industry.

## The procedure

The asbestos case was the first occupational health issue to come before the WTO, and showed how its rules, which favour global capitalism, and fundamental labour rights are pulling in opposite directions. The final outcome may be favourable to workers, but the procedure followed in the affair is disturbing.

The panel consisted of international trade specialists with no particular occupational health expertise. The procedure for appointing scientific experts was not open to scrutiny, and used particularly lax selection criteria as regards vetting for possible conflicts from financial interests or cooperation with the asbestos industry. The WTO secretariat has a pivotal role in what are supposed to be expedited proceedings held behind closed doors. The parties' submissions need not be published and may contain serious inaccuracies which cannot be put under the public spotlight. In this case, the Brazilian government refused to allow its own submissions to be made public. But there is a split in Brazil's coalition government between those who favour banning asbestos (led by the Environment Minister) and those who do not (notably the Governor of the State of Goias, who is a member of President Cardoso's PSDB party). The evidence is that the President's decision to back Canada's complaint was not discussed within the federal executive. This has given rise to the odd situation where the Brazilian government has announced an impending ban, while arguing for controlled use of asbestos in a confidential document to the WTO !

## Stay alert

The WTO decision does not deal with the Technical Barriers to Trade Agreement, leaving the questions as to its scope hanging. The fact is that behind the idea of technical barriers to trade stands a vast array of national legislative, regulatory and technical rules covering areas of overriding interest like occupational health, public health, or environmental protection. There is nothing to stop complaints under the TBT agreement being levelled at other national health protection policies. So, close tabs must be kept on the role of the WTO. The European institutions must, as a matter of urgency, look at whether WTO rules square with Community policies in areas like environmental protection, public health or occupational health. There could well be a real danger that WTO procedures will ultimately bring into question Community levels of protection and EU states' discretion to introduce more protective rules. It is regrettable that most of the debates are focussing on narrow topics (asbestos, bovine growth

hormones, patents on pharmaceutical products, etc.) when it is high time to look at the potential impact of the substantive rules and procedures introduced. That is not something the Commission or European Parliament has done.

The favourable outcome to this case hinges on three factors which will not necessarily occur in others.

- One is the abundant scientific evidence for banning asbestos. The days when the asbestos industry could sway a large body of medical research to deny the dangers of asbestos or cast serious doubt on the existing evidence have long gone in many countries. The precautionary principle did not arise in the case of asbestos. It is a basic preventive measure in relation to a substance which has already killed hundreds of thousands of workers or their families.

- The asbestos industry now stands virtually alone. A series of multinationals with interests in asbestos mining or manufacture have pulled out of the market (not least due to the fear of victims' lawsuits). The world asbestos market has become fairly marginal, even for the main producer countries, and the use of substitute fibre is increasing.

- Upholding Canada's complaint would almost certainly have deepened the WTO's unpopularity. The pro-business daily, the "Financial Times" greeted the decision with a perceptible sigh of relief, saying "A judgment in Canada's favour would have brought down the wrath of environmental groups around the world (...). That in turn could have further weakened the WTO's credibility in the minds of politicians and the public" (FT, 15/06/2000). Arguably, the decision may also reflect a new balance of power following the success of last December's protests in Seattle. ■

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The TUTB website has a special, regularly updated page on this issue reporting on the latest developments : <http://www.etuc.org/tutb/uk/asbestos.html>.