Asbestos ban

Mankind has been using asbestos for thousands of years. We know that from neolithic pottery made in Finland more than 2,000 years before the Christian era. The special properties of asbestos - particularly its fire-resistance - were written about by the Ancient Greeks. By contrast, it has a relatively short industrial history - barely 150 years since the asbestos deposits in the Urals and at Quebec were first mined in the latter half of the 19th century. But the catastrophic health effects of asbestos have been known for nearly 100 years. British and French factory inspectors reported lung disease and very high mortality rates among groups of men and women workers exposed to asbestos. While it is impossible to put a precise figure on the number of victims claimed by asbestos in the 20th century, the death toll from cancers and pulmonary fibrosis runs at least into the hundreds of thousands.

In many industrial countries today, total asbestos-related deaths have outstripped the number of fatal workplace accidents. There are various reasons why prevention policies have signally failed to address this, chief among them the relentless drive for profits and some multinationals' ferocious opposition to effective prevention.

Asbestos stands as a tragic textbook example of the way in which countless other chemical substances kill vast numbers of people each year. That is what prompted us to publish this special report.

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Asbestos disputes in the WTO : battle won – but not the war

The WTO dispute settlement system

To get a proper handle on this dispute, a few words must be said about the dispute settlement system established when the WTO was set up in 1995.

Basically, WTO rules systematize and are progressively extending the different GATT agreements negotiated since 1947. But the WTO is far more instrumental for multinational firms and dominant countries in a globalizing economy. The way the WTO works is designed to concentrate powers to regulate trade in its hands. That reflects the realities of a world economy in which policy-making powers are increasingly concentrated and the divides between classes, genders and nations are widening apace. The proponents of sound governance argue that it would be illogical to preserve the framework of inter-state relations which is the legacy of decolonization, and the East-West divide, which left more sovereignty with States.

One area of new ground broken by the WTO is that new rounds of talks on extending the scope of liberalized trade can in future be started up by a straight majority vote, whereas GATT required the unanimous agreement of all states. Unlike GATT, WTO membership involves an "all-in commitment": states can no longer pick and choose which agreements to join[1]. They must sign up to all the multilateral agreements negotiated in the Uruguay Round. This is highly restrictive for the dominated countries, which had always tried to keep some elbow room to make free-standing choices of which rules to observe in certain areas of a globalized economy. They are now denied this freedom: either they join the WTO and make sure their domestic rules comply with all the agreements concluded, or they stay outside the WTO and risk acquiring pariah status in the world economy. The case made by WTO apologists that it would constitute a truly multilateral framework for developing common rules is belied in practice. It has been clear from the different ministerial conferences that the entire agenda was set at informal meetings between the dominant countries (United States, European Union, Canada, Japan).

The dispute settlement system is a major innovation over the GATT rules. It is based on three bodies: the Dispute Settlement Body (DSB), panels and the Appellate Body.

- The DSB consists of representatives of all the Member States. They are usually diplomats.
- Panels are ad hoc groups of from three to five experts who may be appointed by agreement between the parties to the dispute from a list drawn up by the WTO Secretariat. Failing agreement, the WTO's Director-General will appoint the experts himself.
- The Appellate Body consists of seven experts appointed by the DSB. The word "expert" requires some clarification - it means specialists in international trade.

This set-up limits the procedures in two ways. First, it is not an International Court of Justice compelled to respect fundamental guarantees on human rights as well as procedural rules. Second, they are not experts in the substantive matters that are dealt with by the national measures being complained about. That reflects the WTO's agenda of putting world trade rules above all other considerations. Whether it be social/employment rights, environmental protection or public health, the experts in the WTO procedures are generally unqualified to grasp the real issues at stake in disputes. Their findings are essentially based on the GATT and WTO texts and precedents drawn from trade disputes. Also, in practice the WTO Secretariat has also been found to play a major role in the conduct of the procedures.

The main stages of all procedures are briefly as follows. When a state complains about the rules or practices of another state, a consultation procedure is opened. If they fail to reach agreement within 60 days, the DSB appoints a panel, which has six months to draw up a report after hearing evidence from the parties in dispute and any interested third countries. This report is sent to the members of the DSB, which can adopt it or reject it. It can only be rejected by unanimous vote of the DSB. That has never yet happened. Either side can appeal a panel's ruling. This procedure has to be completed within 90 days. The Appellate Body deals with points of law only. The Appellate Body's report may be adopted by the DSB or rejected by unanimous vote of its members. If the complaint is upheld, the "unsuccessful" state must state what action it will take to comply within a reasonable period of time. If it fails to act, the parties will have to agree on economic compensation. If they cannot, the DSB may authorise retaliatory measures.

The procedure is not cheap, and it is not unknown for multinationals to share in the costs of expertise and contribute to the costs of the procedure. Hence the disproportionate number of complaints made by developed countries compared to those initiated by dominated countries. A WTO overview in March 2001 showed that of 222 complaints, 150 were

[1] With exceptions, however : the multilateral agreements annexed to the agreement setting up the WTO bind only the states that sign up to them.

made by developed countries (overwhelmingly the United States), 61 by "developing countries" and 11 "hybrid" (joint complaints by developed and "developing" countries). The trade sanctions machinery is totally unsuited to dominated countries which have little interest in cutting off their own imports, so in practice, dominated countries tend to forego their retaliatory measures option.

Pace the claims of WTO advocates, its dispute settlement system has not done away with unilateral retaliation by dominant countries. Where a complaint to the WTO has little legal substance, political pressure and unilateral retaliation remain the rule. So, in the long string of disputes between multinational pharmaceutical firms and countries in Asia, Africa and Latin America who are trying to tackle AIDS by encouraging local production of affordable drugs, the dominant countries have used a mix of strongarm tactics. In some cases, they have opted for political pressure (notably against Thailand and South Africa). In others, multinational firms have gone to the national courts (South Africa). In yet others, complaints have been made to the WTO Dispute Settlement Body: by the European Union against India[2], and, more recently, by the United States against Brazil[3].

Stage One : the panel procedure
How to sideline a sensitive political issue

In December 1996, France passed regulations (by decree) placing a blanket ban on the manufacture, processing, sale, import, placing on the market or assignment of asbestos and asbestos-containing products. Only products for which no substitute existed were granted a temporary exemption.

Canada took its dispute with France to the WTO in 1998. A three-person panel was appointed on 25 November 1998. It published its report on 18 September 2000. A line by line analysis of the panel's reasoning is outside the scope of this report.

Discussions in the Appellate Body focused on two groups of issues.

One was to assess the hazards of asbestos and whether the ban was imposed out of legitimate public health concerns. The European Community, backed by the United States, made out a particularly persuasive case for this. Even with the bias introduced by the panel in the official experts appointed and the discussion of these issues, the report clearly recognized the carcinogenicity of asbestos (see especially paragraphs 8.188 and 8.194 of the report).

The other was to identify which WTO agreements might apply to an asbestos ban and how far the ban met the conditions set in those agreements.

The choice of reference agreement plays a key role in WTO procedures, because the grounds on which a national measure detrimental to free trade might be justified are worded differently in the different agreements. The test used to determine whether a national measure is justified varies and the onus of proof is not necessarily governed by the same rules.

In Canada and the United States' opinions, the reference text is the TBT Agreement. Both countries interpret the French decree banning asbestos as a technical regulation. The European Communities take the opposite view: the concept of a technical regulation as expressed by the TBT Agreement "does not cover general prohibitions on the use of a product for reasons to do with the protection of human health". The TBT, it was argued, concerned only technical regulations and standards relating to the detailed characteristics of products and their methods of production. In our view, the best way for the European Union to get such an interpretation would be to get a revision of the TBT Agreement so as to clarify its content.

Compatible with the TBT Agreement ?

This was the first dispute under the TBT Agreement that the WTO Dispute Settlement Body had to deal with. So whatever decision it made was bound to lay down principles with a much more far-reaching impact than just on the immediate issue of Canada's asbestos exports to France.

The French decree had to clear a series of hurdles under the TBT Agreement :

- Article 2.1 prohibits any discrimination between products imported from a WTO Member State and similar products of national origin or originating in another State.
- Article 2.2 stipulates that technical regulations must not create unnecessary obstacles to international trade. It specifies that to this end "technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create". Protection of human is such a legitimate objective, but the concluding sentence of the provision seems to make the decision of whether an objective is legitimate depend on a "risk assessment", taking into account available scientific

[2] Case WT/ DS79/1. The panel report adopted by the DSB on 2 September 1998 found in favour of the European Union's complaint against Indian legislation on patents for pharmaceutical products and agricultural chemicals.

[3] Case WT/ DS199/1. The United States requested the establishment of a panel on 8 January 2001. Following a campaign of protests by a large number of organizations, the United States government renounced its WTO procedure on 26 June 2001.

and technical information. That seems not to leave much scope for applying a precautionary principle.

- Article 2.4 adds a particularly tough condition: national technical regulations must comply with existing international standards, or such parts of them as are effective or appropriate. This rule even extends to standards which are not yet on the books, but whose "completion is imminent".
- Article 2.8 requires States to specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

The European Community argued that the TBT Agreement did not apply in the case in hand, and that the French decree had to be compatibility-checked against the old GATT 1994 rules. Three articles were relevant :

- Article III.4 prohibited any discrimination between imported products and like products of national origin.
- Article XI.1 prohibited obstacles to imports and exports other than customs duties, taxes or other charges.
- Article XX admits a number of justifiable exceptions to these rules. Protection of public health is one of them. However, the burden of proof lies on the country invoking the exception.

The panel's responses

The panel report addressed the legal issues as follows. France's asbestos ban was not a technical regulation within the meaning of the TBT Agreement[4], and so it had to be checked for compliance with the previous GATT 1994 rules. The measure had all the hallmarks of an obstacle to trade, and infringed article III:4 of GATT 1994. The panel reached this conclusion by arguing that asbestos and substitute products were like products. But the measure did meet the requirements of article XX of GATT 1994 as falling within the category of policies intended to protect human health and life. It was for the European Union, therefore, to prove that the measure was "necessary". The panel found that the EU had made out a prima facie case, confirmed by the experts consulted during the procedure, and that Canada had failed to overturn the presumption that there was no reasonable alternative to the asbestos ban.

Ultimately, the panel brushed aside any discussion of the precise scope of the TBT Agreement. It upheld the measure banning asbestos, but put the burden of proof on the State adopting public health measures. It confirmed that the WTO's criteria for interpretation were trade-focused. In looking to establish that asbestos and substitute products were like products, it saw fit to disregard the carcinogenicity issue. Its rationale was that a product is a like product if it is comparable to another in terms of characteristics (quality, end-use, etc.), so dismissing any reference to the dangerous nature of the product from such a debate.

So, the panel report's conclusions were anything but clear-cut. The WTO's unwillingness to examine the scope of the TBT Agreement in such a sensitive case can only be seen as dictated by political considerations.

Health and trade : differences between Community rules and the WTO regime

A comparison of the WTO regime and existing Community rules reveals some key differences.

1. The Community rules are based on a corpus of harmonized market rules, which is clearly outside the WTO's purview. Community law includes a corpus of Directives ensuring a relatively high level of health protection. Notwithstanding their undoubted shortcomings and failings, these Directives do at least provide a benchmark which is completely lacking at international level.

2. The conditions governing each State's ability to issue national rules to protect a higher interest than that of property interests are far more favourable in Community law than in the TBT Agreement. This is best exemplified by comparing the current article 30 of the Community Treaty (former article 38) with article 2 of the TBT Agreement. The Community system leaves significantly more sovereignty in the hands of States, even with the harmonization of market rules. That, indeed, is why the Court of Justice of the European Communities has repeatedly been able to curb the free trade pressures applied by the Commission on Member States seeking to protect public health or the environment by enacting stricter rules than the Community ones (e.g., Swedish regulations on the market in chemical substances).

3. Many European technical standards are adopted under a standardization mandate designed to ensure compliance with essential health or safety requirements. This is clearly not so with standards edicted by international organizations like the ISO.

[4] More specifically, the panel distinguished within the decree between the part banning asbestos and the part making exceptions to the ban. The TBT Agreement, it said, applied only to the second part. But, as Canada was not taking issue with these exceptions, the TBT Agreement was not in issue.

Stage two : appeal
From an unclear decision to no decision at all !

None of the parties was completely happy with the panel's position.

On 23 October 2000, Canada gave notice of appeal, followed on 21 November 2000 by the European Community. The Appellate Body published its report on 12 March 2001. That report reversed a series of views taken by the panel as a trier of the facts.

It even goes further than the panel in some respects, such as in its acceptance that asbestos' carcinogenicity prevents it from being a "like product" to substitute products.

Some improvements

That part of the report deals with similarities between asbestos fibres and substitute products is a clear step forward from the panel's analysis. Its sheer length (70 paragraphs) makes it a linchpin of the Appellate Body's discussion. But even its analysis is not entirely clear-cut, however, inasmuch as it keeps the focus of debate resolutely trade-based. For the Appellate Body, evidence relating to the public health risks associated with a product's characteristics is not a separate criterion (see paragraph 113 of the report). They are one of other relevant elements involved either in analysing the physical properties of a product, or analysing consumer tastes and habits. The downside of this view is to put the discussion firmly back in the sphere of analysis of a specific market, more particularly, the analysis of consumer demand. Indeed, this was not the unanimous view of the Appellate Body itself. One of the members of the appeal section took pains to spell out his views which, on some points, diverged from a purely trade-based approach to the issue (see paragraphs 149 to 154).

The analysis of the fundamentals of a public health policy also goes further than the panel report. The Appellate Body overtly acknowledges that in adopting measures to protect human life or health, a State "may also rely, in good faith, on scientific sources which, at that time, may represent a divergent, but qualified and respected, opinion. A Member is not obliged, in setting health policy, automatically to follow what, at a given time, may constitute a majority scientific opinion" (paragraph 178 of the report). Important as this finding is, it is at present limited to decisions taken under article XX b) of the GATT 1994.

A non-decision on the merits: TBT Agreement left uninterpreted

This is precisely where the Appellate Body leaves a big question mark hanging over the future. It upholds Canada's argument that the Technical Barriers to Trade Agreement applies to a measure like the asbestos ban. The Appellate Body admits that the TBT Agreement imposes obligations on the States that seem to be different from, and additional to, the GATT obligations on the basis of which Canada's complaint was dismissed. But it did not consider itself competent to examine whether France's asbestos ban was compatible with the Technical Barriers to Trade Agreement rules.

This looks for all the world like a positive decision... not to take a decision. The Appellate Body makes no findings about whether the asbestos ban complies with the rules of the TBT Agreement or not. It simply finds that: "the TBT Agreement imposes obligations on Members that seem to be different from, and additional to, the obligations imposed on Members under the GATT1994" (paragraph 80 of the report). As the panel decided not to examine Canada's claims under the TBT Agreement, the Appellate Body decided that it did not have an adequate basis for doing so. In conclusion, the vagaries of the WTO's own procedure prevent it from taking a clear decision on whether an asbestos ban is compatible with the trade rules. As an issue under the TBT Agreement, it still remains an open question.

NGOs shut out

Another vexed issue in the appeal procedure was the transparency of the WTO dispute settlement system. The Appellate Body seemed willing to open the discussions up to non-governmental organizations. In November 2000, it even published a call under which all concerned organizations could have filed written third party submissions. This prompted a storm of protests from States who wanted to keep it as much under wraps as possible. Sadly, all the 17 organizations who wanted to intervene as third parties found themselves shut out of the debate on various pretexts and without exception. So, the European Trade Union Confederation, the International Confederation of Free Trade Unions (ICFTU) and various environmental protection groups were prevented from putting their views.

The adoption of this report is clearly a battle won for workers' rights and public health. It upholds the French decision on public health grounds. But the

The TBT Agreement applies – but the issues are not for today

The TUTB website has a special page on this case. It is regularly updated to keep you abreast of late-breaking developments : www.etuc.org/tutb/uk/asbestos.html

WTO's line of argument is fraught with peril - it sets a precedent by laying claim to WTO jurisdiction over public health and limits state sovereignty in this area based on what are essentially trade promotion rules. It effectively reserves judgement on the TBT Agreement, while considering that it should apply to the case in hand.

Looking beyond the legal arguments, the political scope of this case should be not underestimated. For one thing, the attempt to overthrow a ban on a known carcinogen which kills hundreds of thousands of people a year across the world earned the WTO widespread public opprobrium. The WTO was keen to avoid a repeat of the successful demonstrations seen at Seattle, Davos and Porto Alegre. Also, it retains the ability to shackle the sovereignty of states whose health or environmental protection decisions it considers to be technical barriers to trade.

The third parties : Brazil, Zimbabwe and the USA

Three countries intervened as third parties. Brazil and Zimbabwe closed ranks with Canada. The EU had the backing of the United States.

Doom and gloom helps multinationals

Canada supplied the lion's share of arguments against the asbestos ban. Brazil was keen to keep its submissions under wraps, mainly because of vocal Brazilian trade union support for a ban, and divisions within the government. The federal executive wanted to keep its claims about the safety of asbestos out of the public spotlight, as Brazilian deaths from asbestos exposure run into the thousands. Brazilian President F. H. Cardoso's PSDB party (Party of Brazilian Social Democracy) has links to the pro-asbestos lobby through the governing authorities of the State of Goais. Hence President Cardoso's standard-bearing for the asbestos multinationals against the misgivings of his own Environment Minister, José Sarney. Interestingly, SAMA (the Minaçu asbestos mine operator, part of the Eternit Group) claims that the company "joined Canada in WTO proceedings against France's unilateral decision"[5]. This claim may not be strictly accurate in law because only States can be parties to WTO disputes, but it certainly reflects the political realities.

Brazil and Zimbabwe's submissions added nothing new to Canada's case. They simply added a touch of fake doom and gloom to the picture. The asbestos ban could be bad for developing countries, claimed the Cardoso and Mugabe governments. In truth, the asbestos market is mostly controlled by multinationals, the biggest of which is the Etex-Eternit Group. Asbestos profits do not benefit the people of the countries concerned, but go straight into the pockets of the companies' mainly European shareholders. But the countries do have to foot the health damage and environmental clean-up costs. Brazil's asbestos production market has long been dominated by the Saint-Gobain and Eternit Groups. Most of Zimbabwe's output was controlled by the UK multinational Turner & Newall Ltd. In March 1996, it sold its asbestos mines to a holding company named ARL (African Resources Ltd), which is based in the British Virgin Islands and is run by Mr Matumwa Mawere, a close business associate of President Mugabe[6]. ARL is now also the main investor in asbestos cement firms. Mr Mawere's rocketing good fortune is being paid for by the people of Zimbabwe - ARL's losses have been picked up by the state budget. In South Africa, asbestos was for decades mainly produced by European multinationals (Cape plc, Everite-Eternit, T&N Ltd). Once it stopped being a paying proposition, these same multinationals used every means to avoid compensation payouts to thousands of asbestos victims and refused to foot the huge bill for cleaning up their old production sites. Just cleaning up the North Cape mines alone will leave South Africa with not much change from 20 million dollars.

Not entirely selfless support

In the other camp, the United States placed a big "but" on the EU's line of argument. They agreed that the asbestos ban was legitimate, but that it was a technical regulation within the meaning of the WTO Technical Barriers to Trade Agreement (TBT Agreement). This qualification will turn out to hold the key to the potential impact of the WTO agreements on workplace health.

The United States' backing was not unblemished by political and commercial ulterior motives. The high cost of court-awarded compensation to victims of asbestos-related diseases has knocked the bottom out of the asbestos market in the United States. Since January 2000, no fewer than eight firms have applied for Chapter 11 bankruptcy protection to meet the costs of awards to asbestos victims. The most recent is specialized building materials manufacturer the USG Group, which puts the cost of lawsuits at $275 million in 2001[7].

[5] See SAMA document, "Aos 60 anos tendo que provar segurança do amianto", August 1999, *Brasil Mineral* No 175 (www.signeuseditora.com.br/Bm-175/BMsama.htm).

[6] See *The New Scramble for Africa*, http://www.zimtoday.com/outcomes/corruption21.html.

[7] J. Sindrich, *USG files for bankruptcy, blames asbestos claims*, Reuters, 13 July 2001.

According to a report published in June 2001, US insurance companies have already paid out $41 billion to asbestos victims. The total number of lawsuits could rise to a million in the next few years at a cost of around $200 billion[8].

The strategy of controlled asbestos use has also proved a failure in the United States. The OSHA (federal health and safety agency) admits that the controlled use regulations are being ignored by very many firms. But the United States pressed hard for the recognition of WTO jurisdiction in occupational health matters. The United States was hoping that conceding the case for the asbestos ban would also gain recognition for the TBT Agreement principles, which would enable them to throw open to question European rules on work equipment rules (Machinery Directive and technical standards framed by CEN) and the market for chemical substances and compounds. Hence its equivocal stance of not wanting to oppose the French asbestos ban while avoiding "opening up a loophole of potentially huge dimensions in the TBT Agreement" (point 4.68 of the panel report). The United States elaborated on its view: "the EC argument would mean that a regulation on the safety of infant toys that excluded any parts below a certain size (to prevent choking) would not be a "technical regulation" (...). The provisions of the TBT Agreement would then be rendered a nullity. Such a reading of the TBT Agreement is impermissible as a matter of treaty interpretation, and undesirable as a matter of trade policy". While the United States example is probably not well-chosen, it does make the political issue clear. The asbestos case was supposed to give a strong statement that world trade rules come before higher interests like health, the environment or safety. But getting that result meant creating an accommodating political context by justifying the French asbestos ban as an exception... Not all health or environmental protection measures concern substances which have already killed hundreds of thousands of people and are undeniably carcinogenic. The United States could have reaped the benefits of an ostensibly sympathetic WTO decision and then mount other challenges, for instance on the grounds of the Machinery Directive and European standards being incompatible with international standards.

The EU's policy inconsistencies

The European Union went to bat for the French law banning asbestos. Its legal and scientific arguments were soundly presented and definitely had a positive impact on the outcome of the action. Its political defence, however, was utterly feeble. The European Commission completely failed to address the basic issue of exactly where the WTO's powers stopped and how much sovereign power it left States to protect health or the environment by measures which constitute barriers to trade. There are countless numbers of these, including such things as the banning of substances or equipment, restrictions on placing certain goods on the market, or making it subject to various obligations to inform consumers, perform impact assessments, or prior authorization requirements.

The WTO's dispute settlement system essentially poses two orders of problem.

- There is a clear need for a conflict rule which distinguishes a hierarchy of protected interests. The private property interests which depend on the smooth running of world trade should come second to non-property-based public interests like protecting life and health and ensuring sustainable development for our world. That means the WTO agreements giving far more effective recognition to states' absolute liberty to take measures which restrict trade in the higher public interest (health, environment, etc.).
- There are transparency issues around the procedures followed. The dispute settlement system allows trade specialists meeting behind closed doors to pass judgement on the validity of rules framed within the political complexities of a particular system. This smacks of anti-democratic practices. Laws voted through after what may have been years of debate could be thrown into question by private business lobbies via a complaisant State taking legal action in the name of its trade interests. It is an open secret, for example, that America's food industry lobby is against many food safety regulations. It is particularly hostile to a 1986 Californian regulation known as "Proposition 65" which requires consumers to be clearly warned about chemicals known to cause cancer or reproductive toxicity. Producers who place on the market goods containing a listed chemical must prove that it poses "no significant risk". The European Union believes that this duty to inform consumers creates a barrier to trade, a position actively supported by Grocery Manufacturers of America, the main food industry lobby in the USA. Were this dispute to be referred to the WTO, it would put the trade organization in a position to pass judgement on the validity of legislation approved by the people of California in a referendum passed by a two thirds majority vote[9].

There is a basic conflict between the EU's commitment to maintaining provisions which guarantee

[8] See *British Asbestos Newsletter*, No 43, summer 2001.

[9] On this case and other examples of the threat that the WTO poses to public health, see P. Goldman and J.M. Wagner, Trading Away Public Health: WTO Obstacles to Effective Toxics Controls, *Journal of Public Health Policy*, Vol. 21, No 3, pp. 260-267.

public health within its own territory and its fairly uncritical support of the WTO dispute settlement system.

That conflict focuses on the agreements under which trade disputes are adjudicated, and the procedures set up. This was brought dramatically to light in the bovine growth hormone affair[10], when the finding went against the European Union under agreements that it had negotiated, in a procedure which it defends and is quick to employ against other states.

Looking beyond the asbestos issue, therefore, the full set of WTO agreements needs looking at to see how far they throw into question the *acquis communautaire* (established body of Community laws and regulations) on occupational health, public health and the environment. The WTO agreements are designed to regulate world trade. They deal with such varied areas as intellectual property (TRIPS agreement), phytosanitary (plant health) rules and technical barriers to trade. So far, public health issues have only been addressed in cases dealing with intellectual property rights and plant health protection measures.

This is no place for an analysis of the substantive differences between these agreements. What they share is an approach which puts commercial interests first and through which the WTO, via trade disputes, is tending to claim a sort of catch-all jurisdiction. The new round of negotiations likely to be launched at the WTO Ministerial Meeting at Doha, in Qatar, could amplify that trend. Arguably, the WTO must be strictly reined in to its trade regulation agency role. Provided national measures are not disguised means of discrimination, therefore, the WTO should have no authority to pronounce on their legitimacy (e.g., on compliance with the proportionality principle, or the policy decision/risk assessment linkages). It would be risky in this respect to equate the WTO with a regional organization like the European Union. There are fundamental differences between the process of European integration and the WTO. The distinguishing features of the WTO include :

- it is a specialized organization dealing with trade issues;
- it is a world organization of countries with nothing like the same degree of political, economic and social homogeneity as the EU countries;
- it is an organization which is not concerned to harmonize national rules and so lacks a common reference framework against which to discuss the legitimacy of national rules.

Does the WTO safeguard the precautionary principle ?

The Commission has always shied away from carrying out an impact assessment of the WTO agreements on Community law. At every stage of negotiations, it pressed for a sufficiently vague and general negotiating brief not to have to lay down a clear course of action. Once the agreements were concluded, it contented itself with an overall assessment of the expected benefits of free trade. As guardian of the Treaties, it behoves the Commission to consider whether the agreements it has signed are compatible with many provisions of the Treaty and secondary legislation.

In its preparations for the "millennium round", the Commission made mumbling noises about some points of the agreements it regarded as not up to scratch. Its policy on the TBT Agreement was mainly to strengthen the status of the international standards (arguably a dangerous strategy) and clarify existing definitions and provisions. It thought, in particular, that "*health, consumer safety, and environmental issues, already covered in the existing Agreement, need to be strengthened in a manner that ensures the right balance between prompt, proportional action, where justified, and the avoidance of unjustified precaution*"[11]. This hardly committed it to much. Only in the field of food safety did the Commission, probably still stinging under Europe's defeat in the hormones in meat affair, propose clarification along the lines of recognition of the precautionary principle.

The failure of the Seattle Summit propelled the Prodi Commission into a blind headlong rush. It cast aside its own - albeit modest - reservations and in a document on the precautionary principle went as far as to say that "*each Member of the WTO has the independent right to determine the level of environmental or health protection they consider appropriate. Consequently a member may apply measures, including measures based on the precautionary principle, which lead to a higher level of protection than that provided for in the relevant international standards or recommendations*"[12]. It would certainly be nice if this were so, but the Commission more than anyone should know that the reality of the WTO is not that simple.

It would be a risky business to assume that the Appellate Body's findings in the asbestos case were enough to safeguard public health interests. As mentioned elsewhere in this special report, they just put the debates off to another day. No firm decision was taken on the central issue of the scope of the TBT

10 See Appellate Body Report of 16 January 1998 (Case DS 26).

11 *Communication from the Commission to the Council and the European Parliament - The EU approach to the WTO Millennium Round*, Doc. COM (1999) 331 final, Brussels, 8 July 1999, p. 17.

12 *Communication from the Commission on the precautionary principle*, Doc. COM (2000) 1 final, Brussels, 2 February 2000, p. 11.

Agreement. Above all, there is nothing to suggest that the WTO will take a similar line in cases of bans on other goods. After all, asbestos has been a known carcinogen for decades, and has claimed hundreds of thousands of lives.

The EU's confused relations with the WTO raise a more fundamental issue. The EU's approach to globalization purports both to preserve a measure of sovereignty and force dominated countries to accept the ground rules of dominant countries and their multinational firms. The intellectual property agreements are the most telling example of this.

Trade v health : pharmaceutical firms v AIDS sufferers

It is outrageous that Canada should use free trade rules against public health in the asbestos dispute. It puts it in direct line with a tradition stretching back to the shameful opium wars in the 19th century. But the European Union has had no qualms about another affair which essentially centres around the same issue - its own (successful) WTO complaint against India over pharmaceutical patents[13]. Compelling issues are at stake in this case. It is no secret that some multinationals have secured themselves a nice little earner by patenting medicines used in the fight against AIDS. Prohibitive pricing denies treatment to most people living with AIDS. The European Union claimed that the Indian regulations, aiming to shelter the development of a home-grown pharmaceutical industry, harmed its own trade interests. One decisive factor in this affair was the problems encountered by the Glaxo-Wellcome pharmaceutical group in patenting and securing a marketing monopoly for valaciclovir, a drug used especially against certain AIDS-related opportunistic infections. Beyond this immediate issue also lay the danger for the competitiveness of European capital to see its positions weakened across the entire pharmaceutical product and agricultural chemicals market. It is no secret that the catastrophic AIDS epidemic has prompted some Third World countries to try and develop a home pharmaceutical production industry to deliver more access to treatments to local communities. The European Union was quick enough to put the commercial profit of EU business before people's lives in this case. The fact is that if the pharmaceutical industry keeps its monopoly on marketing, most people living with AIDS will probably never get access to effective treatment.

The asbestos case should not give rise to bandwagon solidarities. If protection of human life is to take precedence over market rules, this principle must apply equally to all humankind, including when it goes against the economic interests of European firms. ■

Through the looking glass...

In a bizarre reversal, another case referred to the WTO found the European Union attacking Canadian pharmaceuticals legislation[14]. Canada was seeking to preserve some limited exceptions to the exclusive rights conferred by a patent in order to safeguard its own public health and social welfare policy, relying in particular on World Health Organization support for the use of generic drugs. The European Union was pushing a strictly free-market interpretation favourable to pharmaceutical firms.

The case raised key issues, hence the long list of third party countries making submissions. Significantly, all the third party "developing" and Eastern European countries (Brazil, Colombia, Cuba, India, Poland and Thailand) plus Israel lined up behind Canada. Switzerland and the United States backed the European Union's position. Japan occupied the middle ground, supporting some Canadian arguments and opposing others. Australia focused mainly on mapping out principles which broadly upheld the Canadian legislation.

Poland put its finger on the economic and social issues at stake, arguing that "generic drugs (are) several times less expensive than patented ones. A replacement of such drugs by patented ones would lead to either the lowering of a proper level of public health protection or to reallocation of funds within the budget at the cost of other equally justified objectives", supporting its argument by referring to a European Parliament Resolution of 16 April 1996 in favour of generic drugs.

The Panel Report called into question part of the Canadian legislation, but without accepting all points of the EU's line of argument. The dispute is not fully settled, because Canada and the European Union were unable to agree on the measures to be taken.

[13] The Indian dispute (DS79/1) was based on the rules of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (often referred to as the TRIPS Agreement). The European Union attacked the alleged absence in India of patent protection for pharmaceutical and agricultural chemical products, and the absence of formal systems that permit the filing of patent applications of and provide exclusive marketing rights for such products. The WTO panel ruled in the European Union's favour on the system of patent protection and the guarantee of exclusive marketing rights. The DSB adopted the panel's report at its meeting of 2 September 1998.

[14] Case DS 114. The Panel Report was submitted on 17 March 2000.

Asbestos kills in Canada, too

All the propaganda about the boons of controlled asbestos use has not stopped working men and women in Quebec and other Canadian provinces falling victim to the asbestos industry.

A recent survey by the Montreal public health network *Direction de la Santé Publique de Montréal-Centre* contains interesting category-specific data on new cases of asbestos-related occupational diseases in Quebec between 1988 and 1997[1]. It deals only with cases recognized by the *Commission de la santé et de la sécurité du travail du Québec* (CSST - Quebec Workmen's Compensation Commission).

Over the survey period, 691 workers were recognized as having an asbestos-related disease. Most of these (34.7%) were mineworkers. Also concerned are work involving the maintenance and repair of asbestos-containing materials and structures (25.2%), building trades (16.6%), asbestos processing (13.5%) and other sectors (4.9%).

Overall, there was a clear rise in the number of cases of asbestosis and mesothelioma over the period, while recognized cases of lung cancer remained stable. A large number of claims were made only after the victim's death (45.5% of the 187 mesothelioma cases, 65.6% of the 207 lung cancer cases, 22.2% of the 373 asbestosis cases).

The study data points to significant under-recognition of asbestos-related occupational diseases. CSST-recognized mesotheliomas account for only around 33% of cases registered in the *Fichier des Tumeurs du Québec* (Quebec Tumor Registry) - well below the tally in the USA (88%). The ratio of recognized cases of mesothelioma to lung cancer raises some questions. Only 38% of recognized lung cancer cases are from sectors other than mining compared to 82% of mesothelioma cases.

There is also quite a high incidence of short-exposure-related mesotheliomas in the processing industry (37% of exposures from 1 to 9 years).

Elsewhere, in an article published by the daily *Globe and Mail* on 18 July 2001, the President of the Canadian Autoworkers Union (CAWU), Buzz Hargrove, reported the case of the Holmes Foundry, Insulation and Caposite plant in Sarnia, Ontario, where 130 workers were recognized as having asbestos-related occupational diseases, including mesothelioma, lung cancer, gastrointestinal cancer and chronic lung diseases. Dozens of them have since died. He also reports the case of a fourteen year-old boy who died of mesothelioma probably caused by inhaling the asbestos fibres on work clothing worn by his father, who also worked at Holmes. The title of the union leader's article says it all: *Just say no to asbestos.*

[1] S. Provencher & L. De Guire, *Etude des nouveaux cas de maladies professionnelles pulmonaires reliées à l'exposition à l'amiante au Québec de 1988 à 1997*, Montréal, May 2001.

Asbestos – not wanted in the world

Australia

Strong action by the seamen's union won the day when the Maritime Union of Australia (MUA) called on dockers in December 2000 not to handle any asbestos cargoes in a bid to speed up the banning of asbestos in Australia.

The Australian debate had been rekindled by the publication of a lengthy National Industry Chemicals Notification and Assessment Service (NICNAS) report on chrysotile asbestos in February 1999. The NICNAS came out in favour of an full-on ban on asbestos, leaving government to set a date for the ban to enter into force.

Then, virtual silence for nearly two years. The National Health and Safety Commission was deadlocked over the time frame for an asbestos ban. The employers' and government representatives simply wanted to phase it out over a period of years. The Australian Confederation of Trade Unions (ACTU) wanted a total ban sooner rather than later.

Australia has one of the highest rates of mesothelioma in the world. Forecasts are for 16,000 asbestos-related mesothelioma and 40,000 lung cancer deaths between 1987 and 2010. The mortality rate from asbestos-related diseases is currently running at some 3,000 workers a year - more than mortality from all work injuries combined. Recent years have seen a rise in recorded mesothelioma deaths among 20-40 year-olds. Given the long latency periods for mesothelioma, this suggests that environmental exposure is also a major health concern. That is why trade unions want a register of asbestos-containing buildings drawn up and a national programme of asbestos removal.

Trade unions have been fighting for years to get asbestos banned and recognition for victims' occupational diseases. They succeeded in getting the Wittenoom, Barbara and Baryulgil mines shut down, and all production of the mineral was halted in 1983 in Australia. But asbestos is still being imported, mainly for the manufacture of friction materials (brake linings) and heat-resistant seals. The main asbestos user is Bendix Mintex, which was still importing 1,500 tonnes of asbestos ore in 2000. The Australian construction industry seems not to use asbestos cement.

The unions won the right to stop work if asbestos use rules are violated. But the exposure limit set by the NOHSC is still very high (1 fibre/ml). Some states and territories may set lower limits. Unions are also campaigning for an asbestos research institute to be set up in New South Wales to support victims and develop better management strategies.
In December 2000, trade union lobbying led the main asbestos user (Bendix Mintex) to reach a deal on replacing asbestos with other less dangerous products. A spate of lawsuits against past and present asbestos-using firms have finally persuaded employers that an asbestos ban is inescapable. Recently, one of the main asbestos using companies, James Hardle, had to set up a 300 million AUS$ fund to underwrite the compensation payable to 400 victims who were suing it.

Finally, on 14 March 2001, the National Occupational Health and Safety Commission (NOHSC) served notice of its plans to propose a total asbestos ban. The Commission is a tripartite body with key responsibilities in the development, running and assessment of prevention programmes in Australia, and powers to propose new regulations. The NOHSC has published three reports on the health assessment of alternative materials to asbestos, a technical assessment of alternatives to asbestos, and an initial economic impact assessment of the measures proposed[1]. Before even being published in March, the NOHSC statement of intent had the backing of five Australian States and Australia's leading asbestos-related products industry group. On 11 April 2001, the remaining states and territories fell into line, and the federal government pledged to support an asbestos ban, which should be effective from 31 December 2003.

Brazil

Brazil is a comparatively recent asbestos ore producer. The first mine at São Felix do Amianto à Poções in the State of Bahia was only opened around 1940. It was declared exhausted and closed in 1967, leaving a real environmental disaster in its wake. A much larger mine was later opened up at Minaçu in the State of Goias. Multinational corporations' investments received state backing under the military dictatorship. All independent trade union activity was classed as "subversion"[2]. The first legislation controlling asbestos use was not enacted until the late 80s. The first - woefully lacking - limitation was set in 1989 in a national agreement on safe asbestos use. In 1993, a group of left opposition MPs tried to get asbestos banned on the basis of the first systematic data revealing the extent of asbestos exposure health problems suffered by Brazilian

[1] All downloadable from: http://www.nohsc.gov.au/NewsAndWhatsNew/MediaReleases/mr-140301.htm.

[2] Recent investigations reveal that some terrorist operations linked to political repression, like Bandeirantes Operation in which 1,200 people were subjected to prolonged torture between 1968 and 1970, were directly employer-funded (H. Contreiras, Segredos do porão, *Isto é*, 21 February 2001).

workers[3]. The parliamentary debate dragged on for two years. The asbestos lobby succeeded in getting chrysotile asbestos dropped from the bill (Act 9.055 of 1995), leaving only asbestos spraying under a complete ban.

Today, Brazil is a major asbestos ore producer. An annual output of 200,000 to 250,000 tonnes (figures for 1992-1997) ranks it as the fifth world producer after the Russian Federation, Canada, China and Kazakhstan[4]. Unlike Canada, which exports almost all of its output, Brazil is a huge asbestos user. An estimated three quarters of its production goes for a range of home market uses. About 85% of asbestos production is used to make asbestos cement (tiles, water tanks, tubes and pipes), the remainder being used mainly by the motor vehicle and textile (heat-resistant protective clothing) industries. The asbestos materials manufacturing base is thought to be highly dispersed into thousands of small firms, with an estimated 300,000 workers exposed. Most of its export sales are to Asian (India, Thailand, Japan), African (Nigeria, Angola) and other Latin American countries.

The federal government's dithering has led many local authorities to take steps to prohibit asbestos use within their jurisdiction.

Municipal governments led the breakthrough in 1997 with draft municipal legislation banning asbestos in the São Paulo industrial suburb of Osasco where an Eternit factory manufacturing asbestos-cement materials had long been sited and many workers had died of asbestos-related diseases. The law was passed in 2000, and the township of Osasco hosted Brazil's first international congress for an asbestos ban in September 2000. The October 2000 municipal elections were marked by considerable advances for Workers' Party (PT), which developed out of trade union opposition to the military dictatorship in the 80s. The number of PT-controlled town councils rose to 187 which, with over 28 million residents, accounts for about 18% of the Brazilian population. In the State of São Paulo alone, nearly a dozen municipal councils, often in large industrial towns, outlawed asbestos use. On 15 February 2001, the municipal council of São Paulo, which with Mexico is the most populous town on the American continent, passed a law banning any use of asbestos-containing materials in the construction industry. The movement is now spreading to many municipalities in other Brazilian states.

The legislative assemblies of several states have followed suit. Workers' Party MPs in the States of Mato Grosso do Sul (January 2001), São Paulo and Rio Grande do Sul (May 2001), and Rio-de-Janeiro (June 2001) have steered legislation through their own assemblies banning asbestos. Similar governmental

Asbestos lobby tries to silence Brazilian labour inspector

One of the leading lights in the movement to get asbestos outlawed in Brazil is labour inspector Fernanda Giannasi. She has come under repeated attack from the business community, and has even been threatened by the state security forces for her activism in favour of workers with asbestos-related occupational diseases (Fernanda is an organizer of the Brazilian Association of Asbestos Victims - ABREA).

Recently, the Montreal-based Asbestos Institute attacked Fernanda Giannasi in a letter to the Brazilian Labour Minister, specifically charging her with acting against Brazil's trade interests by arguing for the asbestos ban. The letter effectively concludes with a demand that she be punished, saying that if Fernanda takes lines on asbestos for which she is not formally authorized by the Brazilian Ministry of Labour, the Asbestos Institute will ask the Ministry to "*take the necessary measures so that Mrs Giannasi no longer abuses her professional responsibilities to promote her personal activities*". The letter is signed by the Institute's Director, Mr Denis Hamel and dated 23 April 2001.

This kind of letter is a dangerous attempt to curtail the freedom of expression and independence of labour inspectors. The Brazilian Ministry of Labour did not take kindly to the Asbestos Institute's attempted bully boy tactics, and made no bones about it in statement from its press spokesman: "*This meddling by international institutions is unacceptable. Our official Fernanda Giannasi is an experienced professional in this field*"[5].

[3] The first Brazilian study on asbestosis cases dates back to 1956. Other studies were published in the 70s, but it was not until 1986 that the first national seminar on dangers of asbestos was staged by different national agencies (see *Revista Brasileira de Saude Ocupacional*, No 63, vol. 13-1988). Detailed information on Brazilian research into asbestos-related diseases is available in; René Mendes, *Asbesto (amianto) e doença*, on: http://www.saudeetrabalho.com. br/.htm.

[4] Kazakhstan produces more or less than Brazil, depending on the source and reference year.

[5] See *Correio Braziliense*, 4 July 2001.

bills are currently under discussion in the legislative assemblies of other states (especially Minas Gerais and Bahia).

A nationally-edicted countrywide asbestos ban is currently being debated by the Brazilian Parliament in response to draft legislation tabled by PT and Green Party MPs. The initiative has been met with fierce lobbying by asbestos interests. Environment Minister José Sarney has repeatedly pledged that asbestos will be outlawed before the term of the present executive expires in 2003. An initial statement to this end was made in July 1999 and the National Environmental Council (Conama) is engaged with the issue. But Minister Sarney has said that he has powerful forces to contend with. The asbestos lobby has particularly active links in two of the coalition parties which support President Cardoso: the Party of Brazilian Social Democracy the President's own party), and the Brazilian People's Party, a political group set up by staunch supporters of the former military dictatorship. The rapporteur for the parliamentary committee tasked with discussing the draft legislation banning asbestos is a right-wing MP, Ronaldo Caiado, who makes no secret of his antipathy to the bill.

The Asbestos Institute (a Montreal-based front for the asbestos employers' interests) stepped up its lobbying activities and sent out a delegation in June 2001 to try and sway the federal Parliament. The Canadian pro-asbestos lobby disingenuously points the finger at "wealthy nations" seeking to promote substitute products, and put themselves across as champions of emergent countries' rights to development. "*These wealthy countries are (...) the ones with powerful transnational companies that made their fortunes over the years by using asbestos. Today, they are the ones fighting to ban it and they offer other products that are supposedly better for people. They leave disastrous years behind them. These are the same companies that made thousands of people work under terrible conditions where workers were exposed to inordinately dusty work environments, filled with fibres left in the air that were breathed into the lungs. This is why, years later, we still find workers who suffer from pulmonary diseases and lung cancer*". The anti-imperialist rhetoric of this statement rings hollow given the extent to which the Asbestos Institute has helped cover up the actions of these multinational corporations during these "disastrous years". It is true to say that some multinational asbestos firms have embraced a sort of green capitalism, with self-righteous statements about social responsibility and environmental protection. It is no less a fact that not all of these firms plan to make good the health and environmental disasters left in their wake. Yet other firms like Eternit-Etex opt for a double standard: asbestos for dominated countries, substitute products for dominant countries. And Canada is the leading exponent of that double standard, using barely 6,000 tonnes of asbestos but producing 500,000 tonnes of ore in 1994.

Chile

The production, import, export and use of all varieties of asbestos and asbestos-containing materials was outlawed by Decree 656 of 12 September 2000, which came into force in June 2001.

Article 2 bans the use of all asbestos-containing materials in the building industry. This is a major triumph for victims' associations, trade unions and environmental groups which have been battling for years to get asbestos banned.

A committee set up by the Ministry of Health to look into asbestos issues in 1999 concluded that asbestos could be replaced with safer materials. The Confederation of Building Workers was a major contributor to the debate, giving evidence that the set-up of the construction industry, based on routine use of subcontracting, made any controlled use strategy a non-starter. It faced the full-blown hostility of construction industry employers who did not want a firm date set for ridding the industry of all asbestos-containing material.

Exemptions are still allowed in some other sectors of the economy with prior Health Ministry authorization.

Chile has been Latin America's largest user of building asbestos[6]. A census carried out in 1992 found that 43.6% of houses had asbestos-cement roofing (compared to 24.5% in El Salvador, 17.9% in Mexico, 15.8% in Cuba and 10.4% in Ecuador). Most of it is public sector housing or the shanties lived in by the poorest in society. ■

[6] C. G. Ramos, Enemigo in casa, *Qué pasa*, No 1377, September 1997.

"Doing away with asbestos" : what strategy for health protection ?

The trade union fight against asbestos didn't end with the EU's total ban on new asbestos use.

Wrecked health due to asbestos will remain a big issue for some years to come, so there must be no let-up in the pressure. The trade union strategy centres on several fronts.

Better legal protection for workers who use asbestos

A revision of the Community Asbestos Directive is in hand. The ETUC has already criticized the Commission's stance on several points. As a point of principle, any exposure limit set should be AT BEST no higher than the lowest exposure limit value currently allowed in a Community State. The point is that no exposure limit offers total protection from carcinogens, so the aim must be to achieve the lowest exposure limit value technically possible. Trade unions also demand that :

- The new directive must not exclude any form of work or sector. Special attention must be paid to seeing that it covers self-employed workers.
- All asbestos removal work must be carried out by contractors approved on the basis of appropriate criteria (industrial training, proper protective equipment, experience of this type of worksite, etc.).

Public registers of asbestos-containing buildings

These are essential on at least two counts.

- The rules on worksites where workers are exposed to asbestos are unworkable without a prior assessment of the buildings concerned. In practice, the worst asbestos exposure seems not to occur on asbestos removal sites but on other building conversion or demolition sites where the presence of asbestos was either not known about or was deliberately concealed.
- A series of recent studies also highlight the threats posed by environmental contamination by asbestos - asbestos-containing buildings tend to be places where people live and work.

Recognition of asbestos-related occupational diseases

Recognition of asbestos-related occupational diseases still faces many hurdles in all EU countries. It is a textbook example of the social injustices created by the failure to harmonize the criteria for recognition of occupational diseases. A study of the 1995 data[1] revealed continuing gaps between EU countries over recognition of mesothelioma (lung cancer caused by asbestos).

In 1995, the United Kingdom recorded 1,139 male deaths from mesothelioma and 659 recognized cases - a rate of 58% of recognized cases for all deaths. The rate was 61% for Germany, 14% for France, 12% for Sweden, and 5% for Italy with 34 cases of recognized occupational disease in 653 mesothelioma deaths. Clearly, these data are not comparable "as is" because of differences in cancer mortality records. What they do, however, is show the divides that no objective data on non-occupational asbestos exposure can explain away.

There is every good reason to suppose that under-recognition of asbestos-related lung cancer is even higher. The data on asbestosis also reveal significant disparities. Incidences can vary from 1 to 96. So, for an all-EU average of 30 asbestosis cases per million workers recognized as occupational diseases, there is 1 case per million in Portugal, 2 in Greece and Spain, 13 in Italy, 28 in the United Kingdom, 30 in France, 59 in Germany and 96 in Belgium.

Recognition of all asbestos-related occupational diseases cannot be divorced from improvements in national systems for recognizing occupational diseases in line with the guidelines laid down in the different Community Recommendations on the matter (the 1962, 1966 and 1990 Recommendations). The evidence is that simple recommendations are no way to achieve the aims set.

There is also an indissoluble link between recognition of occupational diseases, registration of exposed individuals, and public health system recording of the different types of cancer. Making linkages between these types of records is clearly crucial.

The recognition of occupational diseases must go in hand with improved treatments.

Bringing the death merchants to book

The dangers of asbestos were known about at the beginning of the 20th century. Since at least the 1960s, there has been a consistent-enough body of evidence to warrant banning asbestos. Legal

[1] The figures cited here are taken from A. Karjalainen and S. Virtanen, *European Statistics on Occupational Diseases. Evaluation of the 1995 Pilot Data*, Luxembourg: Eurostat, 1999.

action against those directly responsible for exposing workers to asbestos is especially important given that the flat-rate compensation provided by occupational disease compensation schemes comes nowhere near what could be obtained as full compensation in liability proceedings. It is also important to make the political point that, when it comes to occupational health, criminal acts should not be tolerated in the way they traditionally have been.

Policing the activities of European firms in third countries

European firms continue to operate to a double standard in third countries. Prevention policies are implemented in Europe, but not elsewhere in the world. This is a problem not confined to asbestos alone.

Ban the export of asbestos-containing waste to third countries

The most worrying aspect of the policy of exporting toxic waste is shipbreaking in East Asia (see box).

Policing the PPE market

Workers exposed to asbestos usually use personal protective equipment (PPE). But these may not be effective enough. It depends on the quality of the equipment itself and the actual conditions of use. A Finnish survey of high-performance respiratory protection devices found that only 8 out of 21 appliances tested gave workers proper protection against asbestos fibres[2].

Most equipment is still laboratory quality-tested, without regard to actual conditions of use. What is needed is an orderly, comprehensive feedback of experience on PPE performance and proper policing of the PPE market. ■

Recent figures bear out the true dangers of asbestos, be it from low-dose occupational exposure, or exposure from environmental or domestic sources. These figures must be an incentive to set occupational exposure limits at the lowest level technically possible and to make an immediate start on a register of all asbestos-contaminated structures.

An analysis of admissions to French hospitals in 1998[3] found that 3,500 people were hospitalized for asbestos-related cancers. The survey found that over a third of victims were women. Asbestos-related cancers affect a much wider population than just process plant workers. In twenty or so cases, cancers had developed in people younger than 20.

A Spanish survey on mesotheliomas done between 1993 and 1996 in the provinces of Barcelona and Cadiz found that nearly 40% of mesotheliomas could be attributed to environmental or domestic exposures[4]. This survey forms part of wider European research project covering six regions in three countries (Italy, Switzerland and Spain) on the basis of which the researchers concluded that living within a 2,000 metre radius of an asbestos mine, asbestos-cement plant, asbestos textiles, shipyards or brakes factories increases the risk of mesothelioma twelvefold[5].

[2] *Santé et Travail*, No. 32, p. 34.

[3] P. Benkimoun, 3,500 people treated for asbestos-related cancers in 1998, *Le Monde*, 29 March 2001.

[4] A. Agudo *et alii.*, Occupation and Risk of Malignant Pleural Mesothelioma: A Case-Control Study in Spain, *American Journal of Industrial Medicine*, Vol. 37, pp. 159-168.

[5] C. Magnani *et alii.*, Multicentric study on malignant pleural mesothelioma and non-occupational exposure to asbestos, *British Journal of Cancer*, No. 83 (2000), pp. 104-111.

Scrapping asbestos-laden hulks

Industrial countries are increasingly shipping their toxic waste off to Third World countries in a trend spurred by the marketable right to destroy the environment. Free-market economists apply the same rationale for buying and selling pollution rights in order to justify the export of toxic wastes to countries "freely willing" to run the risk for cash.

One case which points up how tragically acute this situation is as regards asbestos is shipbreaking in India, Bangladesh, the Philippines and China. The biggest of these scrapping sites is at Alang in the Indian State of Gujarat. Geographical peculiarities which create a huge tidal range between low and high tide in Alang Bay allows ships - including deep-draught ones - to be simply driven onto the beach during full moon high tides, dispensing with the need for proper dry-dock shipbreaking facilities. Between 35,000 and 40,000 workers from poverty-stricken rural communities work on them in inhumane conditions for basic pay of about $1.5 a day. Working completely unprotected and kept in total ignorance of the dangers involved, these men and women have to strip the structural steel work from the ships for sale on the local market. Work-related accidents are high and hygiene appalling. They do not even have showers in their makeshift lodgings.

Most of the ships built in the 60s and 70s are packjam full of asbestos and a host of other toxic substances like arsenic, cadmium, PCBs, etc. Greenpeace estimates that about 700 such vessels are sold each year to brokers for scrapping at these Asian shipbreaking locations. It is common practice among European firms. Amongst others, the Anglo-Dutch shipping line P&O Nedlloyd, Hamburg Süd (a subsidiary of the German food group Dr Oetker) and a subsidiary of Hapag-Lloyd, have been condemned by Greenpeace for sending asbestos-containing ships to these killer scrapping sites.

Most of these companies are obviously not too embarrassed by their practices to flaunt "environmental charters" and their belief in "corporate social responsibility". The P&O Nedlloyd group has adopted the International Safety Management System for its operations which, as well as marine safety, is also supposed to cover certain environmental protection aspects. In 1995, the head of the Oetker Group, August Oetker, was awarded the title of "Eco-Manager of the Year" by the WWF (World Wide Fund For Nature) and the German magazine *Capital* for his drive to cut waste and promote environmentally-sound production.

Technically, the export of toxic waste from OECD to non- OECD countries has been illegal since 1995 by agreement between the parties to the Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes. But the Convention is not being enforced. It is our understanding that the EU has done nothing to halt the scrapping of toxic waste-laden ships in East Asia.

For further details on shipbreaking in Asia, see :

- http://www.greenpeace.org.au/info/archives/toxic/trade/scrapasia.htm
- http://www.zotnet.net/~erunners/e127/scrapping.html
- http://www.sunspot.net/news/custom/shipbreakers/ndx_en.shtml

Photos by Perry Thorsvik:Sun Staff