

NGOS WELCOME WTO GREEN LIGHT TO FRENCH BAN ON ASBESTOS BUT REMAIN SCEPTICAL ABOUT THE WTO DISPUTE SETTLEMENT PROCESS

Commenting on this week's WTO ruling in favour of a French ban on asbestos, an NGO coalition comprising Greenpeace International, WWF International, Ban Asbestos Network, International Ban Asbestos Secretariat and the Foundation for International Environmental Law and Development (FIELD) welcomed the Appellate Body's finding that toxic asbestos is not the same as safer materials.

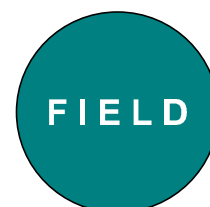
Reversing a previous decision of a WTO Panel, the WTO Appellate Body found that carcinogenic asbestos is not the same as its safer substitutes and that the French ban does not violate international trade laws. The Appellate Body's finding is consistent with arguments made by the NGOs in an *amicus curiae* – or friend of the court – submission made to the WTO in this case.

Encouraged by the WTO decision, Laurie Kazan-Allen of the International Ban Asbestos Secretariat said "Asbestos-related diseases are killing thousands of people as we speak. Thanks to this latest ruling from the Appellate Body, responsible governments can now proceed unheeded by the WTO in their efforts to protect their workers and consumers from this deadly material."

The application of the human health exception under WTO rules was also considered by the Appellate Body in this case. Ordinarily, a finding that a ban does not violate the WTO rules would make it unnecessary to consider any exceptions. However, Canada's appeal of the Panel's finding that the French ban was permitted by the health exception obliged the Appellate Body to address the issue in its report. Upholding the Panel's finding on the application of the health exception, the Appellate Body confirmed that it is up to each Member government to decide on the level of protection it wants to provide for its people. Having chosen to provide absolute protection from cancer-causing asbestos, the Appellate Body confirmed that France had no reasonably available alternative to the ban. The Appellate Body added that, in setting health policy, Member governments are not obliged to follow majority scientific opinion.

"In this case, the scientific evidence supporting the French ban on asbestos was overwhelming," explained Aimee Gonzales, WWF International Senior Policy Adviser, "however, the Appellate Body's guidance on the relevance of scientific opinion confirms that all Member governments may be entitled to opt for maximum protection of humans, animals and plants even where scientists disagree as to the risks justifying protection."

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“This is an important step because it represents a validation of the precautionary principle in trade related disputes.” said Remi Parmentier, Political Director of Greenpeace International.

The Appellate Body’s ruling vindicated the NGO coalition’s criticisms of the Panel’s analysis by confirming that governments can make distinctions between toxic and non-toxic materials. However, the NGOs remain mystified as to why the Appellate Body rejected their brief and failed to provide reasons for doing so. In November last year, the Appellate Body invited and promptly rejected all requests to file non-party submissions in the WTO asbestos case under an “Additional Procedure”. In justifying the rejections of applications that had been made before the deadline for requests, the Appellate Body stated that the applicants had failed to comply with all of the requirements of the Additional Procedure. The Appellate Body did not indicate which of the seven requirements for requests had not been satisfied or on what basis the applications had failed to comply with the requirements. Unsatisfied with the Appellate Body’s treatment of its request, the NGO coalition went ahead and submitted a written brief on the legal issues.

“By refusing to hear the arguments of public concern from NGOs, the WTO is at odds with the Appellate Body’s insistence on fair play and due process.” said Greenpeace International Political Director Remi Parmentier.

“We have to make sure that a distinction is made between the value of *amicus* procedures generally and the need to develop the capacity of developing country Members and Southern public interest groups to engage in the dispute settlement process.” said Aimee Gonzales, WWF International Senior Policy Adviser.

With limited avenues through which public interest organisations can communicate their concerns to the WTO, NGOs view *amicus* submissions as an important vehicle for their constructive participation in international trade decisions. The NGO coalition’s *amicus* submission may be viewed at <http://www.field.org.uk/papers/tepap.htm>.

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