

EUROPEAN COMMUNITIES - MEASURES AFFECTING ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS

Application for leave to file a written brief with the Appellate Body
by the following joint Applicants

In accordance with the Additional Procedure Adopted Under Rule 16(1) of the Working Procedures for Appellate Review AB-2000-11 (WT/DS135/9), dated 8 November 2000, the undersigned Applicants seek leave to file a written brief with the Appellate Body in the appeal made by Canada pursuant to its Notice of Appeal (WT/DS135/8) dated 23 October 2000.

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1. Description of the Applicants:

(a) **Foundation for International Environmental Law and Development (FIELD)** is a not-for-profit legal organization with offices in London. FIELD is staffed by lawyers and assistants dedicated to promoting environmental protection and sustainable development through law. FIELD's activities include providing legal and policy advice to the international community and promoting the dissemination of law through teaching, training and publications. Where possible, FIELD provides its services on a *pro bono* basis, deriving income from foundation grants, governmental institutions and fee-paying clients.

(b) **Center for International Environmental Law (CIEL)** is a public interest, not-for-profit law firm with offices in Geneva and Washington DC. CIEL is staffed by 20 attorneys and support staff and has the general objectives of solving environmental problems and promoting sustainable societies by incorporating fundamental principles of ecology and justice into international and national law systems. CIEL's activities include providing a full range of environmental legal services in both international and comparative national law through policy research and publication, advice and advocacy, education and training. Where possible, CIEL provides its services on a *pro bono* basis, deriving income from foundation grants, government institutions and fee-paying clients.

(c) **International Ban Asbestos Secretariat (IBAS)** is a non-government network coordinating the efforts of asbestos victims groups, vulnerable workers and trade unionists, environmental organizations, government agencies, medical research bodies, and other groups involved in working to combat the legacy of wide-spread misuse of asbestos throughout the world. IBAS represents the interests of organizations including the White Lung Asbestos Information Center, USA, the Merseyside Victims of Asbestos Support Group, UK, and the Brazilian Asbestos Victims Association, Brazil. IBAS has the general objectives of eradicating the use of asbestos worldwide, minimizing dangers from asbestos products already within society, ensuring that information on current medical research and treatment methods for asbestos-related diseases is widely available, and providing information to assist asbestos victims seeking redress and financial compensation. IBAS activities include coordinating the efforts of like-minded individuals and groups, devising and implementing international initiatives, collecting and disseminating information, and providing its website as an international resource for public information. IBAS is funded by donations from foundations and companies that work to benefit asbestos victims.

(d) **Ban Asbestos International and Virtual Network (BAN)** is a not-for-profit network of asbestos victims' associations and volunteers. BAN has the general objective of supporting associations and volunteers in their campaign for asbestos bans in the European Union and around the world. BAN's activities include facilitating exchanges of information between asbestos victims groups, and making the consequences of asbestos use in public health visible. BAN receives no formal funding and members bear their own costs in participating in BAN activities.

(e) **World Wide Fund for Nature, International (WWF)** is a not-for-profit network organization with almost 5 million regular supporters, over 50 country or regional offices, and 5 Associate Organizations. WWF has the general objectives of conserving the planet's natural environment, and building a future in which humans live in harmony with nature. WWF's activities include advocacy at the local, national and international level to establish appropriate policies and to highlight solutions to crucial environmental problems through linking field and policy work. WWF is funded by individual supporters, legacies, corporations, trusts and foundations, government aid agencies and royalties.

(f) **Greenpeace International (GPI)** is an independent, not-for-profit global environmental campaigning organization with 2.5 million members all over the world. GPI has the general objective of exposing environmental problems and seeking creatively solutions that are essential to a green and peaceful future. GPI's activities include organizing public campaigns to eliminate toxic substances; to protect oceans and ancient forests; to phase-out fossil fuels and promote renewable energies in order to stop climate change; to prevent the release of genetically modified organisms into nature; and to promote nuclear disarmament. GPI relies on the voluntary donations of individual supporters, and on grant support from foundations.

(g) **Lutheran World Federation (LWF)** is a not-for-profit association constituting a communion of 131 member churches and 60 million people around the world. LWF has the general objectives of promoting peace, care for God's creation, human rights, social and economic justice, and strengthening its member churches toward Christian unity worldwide. LWF's activities include field-work in support of refugees or persons affected by humanitarian emergencies, and advocacy work for the promotion of peace, human rights, social and economic justice, and sustainable development. LWF's primary sources of financing are its member churches and church-related agencies.

2. The Applicants' individual and common interests in this case include: (a) protecting human health from the proven hazards of asbestos fibers and products containing them; (b) reducing the public health risk facing people who live, work and die, knowingly and unknowingly, in the presence of asbestos – a deadly carcinogen – by halting its use and production; (c) facilitating the development of laws to protect human health, safety and the environment; (d) facilitating an interpretation of international trade law that is consistent with international health, safety and environmental standards; and (e) ensuring the participation of civil society and the representation of its interests in policymaking on international trade and sustainable development.

3. The Applicants intend to address the following specific issues of law: (a) the Panel erred in law in concluding that the measure which is the subject of this dispute “introduces a treatment of [like] products that is discriminatory under Article III:4 [of the GATT 1994]”; and (b), in the alternative, the Panel did not err in law in concluding that the measure is justified “by the provisions of ... Article XX of the GATT 1994”.

In addition, given the scope of Canada's Notice of Appeal, the Applicants seek leave to address issues of law raised in any cross-appeal, including the application of Article XXIII: 1(b) GATT. The Applicants, while agreeing with the Panel's conclusion that the Agreement on Technical Barriers to Trade does not apply to the measure, do not seek to address this in their brief.

4. The Applicants' brief will contribute to achieving a satisfactory settlement of the matter. The Applicants will provide expert legal analysis informed by individuals and groups whose interests are directly affected by the risks associated with the use, sale and international trade in asbestos. The Applicants' brief will raise critical legal issues of public concern from an individual and non-governmental perspective that is distinct from that of the parties and third parties to this dispute. It will examine the broader implications of this decision for development, health, human rights, the environment, and other facets of general welfare. As parties likely to be affected by the Appellate Body's decision, the Applicants have a direct interest in the resolution of this case. As *amicus curiae*, the Applicants seek to provide creative solutions that reflect unique legal expertise relating to trade and sustainable development and, in particular, to the interface between the WTO and domestic regulatory issues. The Applicants are confident that they will bring a distinctly valuable perspective to the Appellate Body in its endeavors to reach a fair settlement of this dispute. The Applicants, by virtue of past experience with *amicus curiae* submissions to the Appellate Body, have a demonstrated capacity to seek solutions that balance the need to reconcile trade, environment, and developmental perspectives, within the overarching objectives of sustainable development.

5. The Applicants' contribution will not be repetitive of party or third party submissions: (i) The Applicants represent the public interests of a coalition of natural and legal persons that transcend national boundaries, and includes the residents of the parties, the third parties, and of the states that are not parties to this dispute; (ii) the Applicants' contribution will reflect perspectives that differ from those that are brought by governmental institutions, and that are likely to be reflected in a unified governmental submission; (iii) the Applicants will seek to reinforce arguments not adequately addressed by the parties and third parties; (iv) the Applicants submission will seek to promote the long-term interests of society – in terms of safety, environmental protection and human rights – and to examine the long-term, systemic implications of this decision for the multilateral trading system and its interface with related legal systems.

6. The Applicants are independent of parties and third parties to this dispute. Neither FIELD nor CIEL has, and it is our understanding that no other Applicant has, any relationship, direct or indirect, with any party or third party to this dispute relevant to the subject matter and outcome of this dispute, or has received any assistance, financial or otherwise, from a party or a third party to this dispute in the preparation of this Application or the proposed written brief.

Respectfully submitted by:

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On behalf of Center for International Environmental
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Dated _____

And together on behalf of: International Ban Asbestos Secretariat; Ban Asbestos International and Virtual Network; World Wide Fund for Nature, International; Greenpeace International; and the Lutheran World Federation.