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## Mesothelioma Articles

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### **Asbestos is Not Banned in North America**(1)

by Dr. Barry I. Castleman, Environmental Consultant

Around the world, when public health workers call for national bans on asbestos, one of the things they hear from the local asbestos industry is that the U.S. has not banned asbestos. The U.S. Environmental Protection Agency (EPA) issued regulations to phase out the use of almost all asbestos products in 1989, and these rules were overturned in a court challenge in 1991. Industry spokesmen accordingly emphasize that the sale of almost all asbestos products is still allowed in the U.S. and point to the existence of a 1986 International Labor Organization (ILO) convention on asbestos to assert that there are international standards in effect for "controlled use" of asbestos.(2)

The U.S. Court of Appeals in New Orleans decision of 1991 criticized EPA for not identifying all the substitute products that would replace the asbestos products and evaluating their toxicity, in order to justify the ban.(3) EPA wanted to appeal this ruling to the Supreme Court and asked the U.S. Department of Justice to take on the appeal. After the Justice Department refused, EPA asked Justice to reconsider and was turned down again. EPA had to settle for issuing a statement criticizing the court for "significant legal errors" in interpreting the law and substituting its judgment for that of EPA in balancing the costs and benefits of asbestos products banned under the rule.(4)

When the EPA issued its asbestos ban rule, the companies that had constituted the U.S. asbestos industry were beset by many thousands of personal injury lawsuits, based on their long-term failure to warn product users that there were lethal, non-obvious hazards from the dust created when these products were used. U.S. industry was acutely aware that substitute products had better be a lot safer than asbestos, or the manufacturers would wind up facing new liabilities, dealing with adverse media reports and facing government regulations. But the court -- by setting the requirement that EPA, in effect, look into a crystal ball and predict the future breakdown of substitute usage that would follow an asbestos ban, and then do a risk analysis on all of these substitute products -set an impossible burden for the EPA in banning asbestos products. EPA has not banned any substance for any use since 1991 under the provision of the law used for the asbestos ban.

Sweden and other European countries led in forcing technological advance in the replacement of asbestos in vehicle brakes, the last major application in which it could be claimed that asbestos use was essential. EPA tried in 1992 to get auto makers to voluntarily agree to stop using asbestos in vehicle brakes, gaskets, etc., and seemed to be successful at first. General Motors, for example, wrote that it would honor the deadlines for elimination of asbestos in various products that were contained in the overturned EPA regulation. That would have ended sale of asbestos in some vehicle friction products and gaskets in 1994 and the rest in 1997. The asbestos industry then charged that the proposed agreement of the auto makers would be illegal, and EPA's effort to get auto makers' voluntary agreement collapsed. In 1998, General Motors was still selling asbestos brakes on two models of new cars in the U.S. -- even though all its sales of new cars and replacement parts in major European countries were by then required to be asbestos-free.(5)

At that time, I realized that the U.S. classification of imported "asbestos" products allowed non-asbestos products to be counted in the same categories. My request to the U.S. International Trade Commission to separate these commodity classifications into asbestos and non-asbestos product categories was turned down, and to this day the extent to which the U.S. imports most asbestos products is not clearly evident from import statistics.(6) Trends of imports from asbestos-using countries are nonetheless apparent. Worldwide imports of brake linings and pads for cars and trucks composed "of asbestos and other minerals" went from \$59 million in 1996 to \$110 million in 2005. Imports of these products from Brazil, China, Colombia, and Mexico went up in value from \$23 million to \$76 million between 2000 and 2005.

### **It is ridiculous for the u.s. to continue to allow the importation of asbestos products no longer even made in the u.s.**

The U.S. imported 60 million kg of "asbestos and cellulose-based cement sheet, panel" from Mexico in 2005, triple the quantity in 2000, accounting for about two-thirds of worldwide imports of this commodity. Mexico also supplied all U.S. imports of "asbestos yarn and thread," over 99,000 kg, in 2005 (about doubled since these imports began in 2002). If such imports are allowed to continue, the U.S. government should examine Customs information on importers and exporters to identify imports of particular asbestos products and see how they are used in the U.S. These asbestos products have not been made in the U.S. for many years. Consumption of asbestos fiber for manufacturing in the U.S. has gone steadily down. Worker and public concern, insurers'

aversion, and costs imposed by EPA and OSHA regulations for asbestos have combined to all but end the use of asbestos in manufacturing in the U.S. The country's use of asbestos, mainly in asphalt roofing shingles, was 2,500 m.t. in 2005, down from 803,000 m.t. in the peak year of 1973 and 35,000 m.t. in 1991. It is ridiculous for the U.S. to continue to allow the importation of asbestos products no longer even made in the U.S.

The current toll from historic asbestos use in the U.S. is estimated at 10,000 deaths per year.(7) Legislation debated in the U.S. Senate, to close the courts to asbestos victims in exchange for a \$140 billion, industry-financed, government-run trust fund, failed to be adopted in February of 2006. A major concern was that the trust fund would run short and become a burden on the taxpayers. Asbestos litigation had cost U.S. manufacturers and insurers \$70 billion by the end of 2002. With such experience, you might think the U.S. would be ready to join such countries as Argentina, Chile, Gabon, Honduras, Japan, Kuwait, Saudi Arabia, and Uruguay, and all 25 countries of the European Union that have banned asbestos. In 2002, Senator Patty Murray and others introduced the "Ban Asbestos in America Act." This would accomplish what EPA was unable to, and it would initiate additional efforts to examine the usage of other minerals that may be contaminated with asbestos (e.g., talc, vermiculite, and stone used in construction). Unfortunately, this legislation has not been brought to a vote in the Senate.

Canada, like the U.S., uses very little asbestos in domestic manufacturing. Canada's asbestos mines export virtually all of their output to poorer countries. Many of the perennial defenders of chrysotile asbestos on the global scene today are Canadian scientists, they carry on the tradition started in the 1960s by spokesmen for multinational asbestos corporations. But they would be less effective as globe-trotting asbestos industry propagandists, featured in news reports with titles like "Asbestos cement products are absolutely safe"(8), if Canada banned asbestos. Canada's continuing efforts to promote asbestos included a seminar this January, co-sponsored by the Canadian Embassy in Jakarta and the Fiber Cement Manufacturers Association of Indonesia. At this event, despite his expressed willingness to participate, the world-renowned authority on asbestos, Dr. Douglas Henderson of Australia, was excluded from the program.

When Canada unsuccessfully challenged France's asbestos ban at the World Trade Organization in 1999, Canada was the world's largest exporter of asbestos and the second largest producer.(9) By 2003, Canada was no longer among the five largest asbestos producing countries. Canada's asbestos mines now employ only hundreds of workers, yielding an annual output of over 200 metric tons for each miner. It has been estimated that, for every 170 m.t. of asbestos mined and consumed in the world, one person has contracted [mesothelioma](#).(10) Noting the proportionality between asbestos-caused mesotheliomas and lung cancers in the epidemiology studies, the mesothelioma mortality can be used to project the added cases of lung cancer resulting from the same usage of asbestos. Even taking the conservative estimate that there is one death from lung cancer for every death from mesothelioma caused by asbestos, the toll for every year that a Canadian asbestos miner mines asbestos is at least two lives in the asbestos-importing countries (and Canada).

The remaining markets in Asia, Africa, and Latin America are rapidly being taken over by competitors in Russia, Kazakhstan, Zimbabwe, and Brazil. The competition will close the Quebec mines before long, if Canada doesn't ban asbestos and pension off the miners first (as recommended by Selikoff over 25 years ago). Though most business lost by Canada may be picked up by others, Canada's withdrawal as an advocate for asbestos use on the world stage would make a major difference.(11) In recent years, there have been organized efforts to get asbestos banned in Canada by unionists, environmentalists, asbestos victims, public health scientists, and doctors.

If Canada limited its exports to countries that have ratified ILO Convention 162 on safeguards for the use of asbestos, the asbestos mines would probably have to close. Only 11 countries have ratified this convention that still permit the use of asbestos and are not asbestos exporting countries themselves; and none of these mostly small countries are in Asia. Actual conformity with the terms of the ILO convention to protect workers would make the prices of asbestos products far less competitive, and such measures are probably not achieved even in most of the asbestos-consuming countries that have ratified the ILO convention.(12) The profitability of the asbestos business depends on avoiding the costs of prevention and compensation of occupational disease.

Bans of asbestos in the U.S. and Canada would have great symbolic, political, and public health value outside North America, even though the market for asbestos products in each of these countries is only a miniscule part of the global asbestos trade.

#### Endnotes and References

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