

the *Canada Post Corporation Act*.⁷³ In addition, under the *Financial Administration Act*, as a Schedule III, Part II Crown Corporation, Canada Post is expected to: operate in a competitive environment; earn a return on equity; not depend on government appropriation; and finally, provide a reasonable expectation that it will pay dividends. Both the *Canada Post Corporation Act* and the *Financial Administration Act* essentially establish a commercial mandate for Canada Post comparable to a private sector interest.

106. This legislative framework provides Canada Post with the legal and operational flexibility to implement its commercially-oriented mandate. With respect to publications, i.e., newspapers and periodicals, Canada Post is not a government monopoly and does not have the exclusive right of delivery. Canada Post does not have the power of a monopoly when it sets commercial rates for the delivery of publications.⁷⁴ It competes in an open competitive market for its share of the publications delivery market.

107. Section 14(2) of the *Canada Post Corporation Act* states that "[n]othing in this Act shall be construed as requiring any person to transmit by post any newspaper, magazine, book, catalogue or goods." Pursuant to section 2 of the *Act*, "post" means to leave in a post office or with a person authorized by the Corporation to receive mailable matter. Any publisher, foreign or domestic, is free to arrange for the delivery of his newspaper or periodical via Canada Post or with any other distributor. Foreign publishers have the additional option of mailing their copies addressed to Canadian addresses with their own postal administration at the applicable international printed matter rates.⁷⁵

108. The principle of national treatment of Article III:4 of the GATT 1994 does not apply to the commercial postal rates charged by Canada Post. The United States contends that commercial rates set by Canada Post are "regulations" or "requirements" affecting the internal sale of imported publications. The term regulation in the context of the GATT 1994 means the rules or orders having the force of law that are issued by executive or administrative authorities of government. The rates for the delivery of letters in Canada are

73. Canada Post operates within the legislative framework of the *Canada Post Corporation Act* (*supra* note 30), the *Financial Administration Act*, and other relevant statutes.

74. Canada Post does have a limited exclusive privilege with respect to the collection, transmission and delivery of "letters" in Canada, including addressed advertising mail. This exclusive privilege represents in aggregate approximately 50 per cent of total corporate revenues. Canada Post has no statutory protection for the remainder of its business and must compete with existing or potential competitors, as the case may be. The Corporation's exclusive privilege is defined in Section 14 and 15 of the *Canada Post Corporation Act*.

75. Given the geographic proximity of the United States and the volume of American publications destined to Canadian subscribers, there has always been a market for direct deposit in Canada for Canadian distribution. Direct deposit generally offers improved service performance and less costly postage rates to publishers than if they chose to use the services of their domestic postal administration (i.e., United States Postal Service (USPS)).