

CERTAIN MEASURES CONCERNING PERIODICALS
COMMENTS ON THE APPELLATE BODY REPORT

A Panel was established in June 1997 under the World Trade Organization (the "WTO") to consider a complaint by the United States concerning three Canadian measures on periodicals : Tariff Code 9958, which prohibits the importation into Canada of certain periodicals, including split-run editions; Part V.1 of the Excise Tax Act, which imposes an excise tax on split-run editions of periodicals; and the application by Canada Post Corporation of commercial "Canadian", commercial "international" and "funded" publications mail postal rates.

The Panel reached the conclusions that : (1) Tariff Code 9958 is inconsistent with Article XI:1 of the GATT 1994 and cannot be justified under Article XX(d) of the GATT 1994; (2) that Part V.1 of the Excise Tax Act is inconsistent with Article III:2, first sentence, of the GATT 1994; and (3) that the application by Canada Post of lower "commercial Canadian" postal rates to domestically-produced periodicals than to imported periodicals is inconsistent with Article III:4 of the GATT 1994; but (4) that the maintenance of the "funded" rate scheme is justified under Article III:8(b) of the GATT 1994.

Canada appealed the finding on the excise tax and the United States appealed the finding on the postal subsidy. The Appellate Body concluded that Part V.1 of the Excise Tax Act is inconsistent with Article III:2, second sentence, of the GATT 1994. The Appellate Body also concluded that the Panel incorrectly interpreted Article III:8(b) of the GATT 1994 and reversed the Panel's findings and conclusions that Canada's funded postal rates scheme is justified under the GATT 1994.

The report of the Panel and the report of the Appellate Body were adopted by WTO Members on July 30, 1997. Canada made the following comments.

a) Opening remarks

1. Canada acknowledges, in accordance with Articles 16.4 and 17.14 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), that the Panel and Appellate Body reports are adopted and unconditionally accepted by the parties to the dispute, unless the Dispute Settlement Body ("DSB") decides by consensus not to adopt the reports. Nonetheless, Canada notes that the adoption procedure is without prejudice to the right of Members to express their views. Consequently, Canada wishes to express its views on the reports of the Panel and the Appellate Body, and to underline the importance to Canada of a number of issues raised in this case.

2. It is with respect for the fundamental importance of the