

associated with the magazines, are separate products. They are not involved in the production process of the magazines. The advertising services of the publisher are not, like labour in the production of a car, an input in the production of the good.

12. If allowed, the U.S interpretation of the expression "indirectly" would force Canada to accord national treatment to foreign publishers with respect to advertising services when it did not make any commitment in that respect in the GATS. Such an interpretation would create an imbalance in carefully negotiated concessions on services sectors made by WTO Members during the last round of Multilateral Trade Negotiations. It would also void the GATS of its effectiveness as it concerns Canada's right not to make commitments on advertising services. This unreasonable result can simply not be the intended result of the expression "indirectly" in Article III:2 of the GATT.¹⁰

13. If the expression "indirectly" is interpreted as broadly as the United States would propose, it would have the effect of sweeping the regulation of services in through the back door of the GATT and undermining the integrity of the GATS. The result would be to distort the relationship between the two agreements, and to erode the balance of specific commitments negotiated in the framework of the GATS.

2. Article III:2, first sentence

(a) Split-run periodicals are not "like" products to periodicals containing editorial material created for the Canadian market

14. The first part of Canada's argument in respect of Article III:2, first sentence, is that split-runs based on foreign content, and magazines based on content specifically created for the Canadian market, are not "like products". Canada's approach is based upon a narrow construction of the expression "like products", and the case-by-case approach mandated in the recent decision of the Appellate Body.¹¹ It puts the emphasis on the editorial content as the characteristic that distinguishes one magazine from another. In determining whether or not publications created for Canada are "like" publications replicated from foreign editions, the critical factor is content developed for the Canadian market. The United States puts all magazines into a single, all-encompassing category of "like products". The United States has ignored both requirements established by the jurisprudence, i.e., that the expression be narrowly construed and the determination be made on a case-by-case basis.

15. As the complainant, the United States bears the burden of proving that Canada acted inconsistently with its obligations under Article III:2, first sentence. This is a principle of

¹⁰ Paragraphs 7 to 12 address issues raised by the Panel in Questions 1, 4 and 5.

¹¹ *Japan - Taxes on Alcoholic Beverages* (Report of the Appellate Body, 4 October 1996), AB-1996-2, WTO Doc. WT/DS8/AB/R, WT/DS10/AB/R and WT/DS11/AB/R [hereinafter *Japanese Liquor Tax Appeal*].