

by publishers who sell their advertising services in association with split-run magazines. It is clear that the measure pertains to the supply of a service and as such is a measure that WTO Members intended to be disciplined under the GATS.⁷ This was recognized by the United States Trade Representative, in the *1995 National Trade Estimate Report on Foreign Trade Barriers*, where Canada's practices with respect to split-run advertising were listed and described under the heading Services Barriers.⁸

10. Nor is the excise tax one that applies "indirectly" to a good within the meaning of Article III:2.⁹ The "concept of indirectly" in Article III:2 does not capture measures that are disciplined under the GATS. It is intended to capture taxes that apply to "inputs" that contribute to the production of a good – raw materials, service inputs, intermediate inputs, etc. Taxes on such production inputs are properly subject to Article III:2 because they affect the costs and prices, and therefore the competitive position of goods that are subject to Article III:2.

11. It is important, however, to distinguish service inputs that are "end-products" in their own right. As mentioned in Canada's First Submission, a magazine provides two distinct products to two distinct markets. The publishers' advertising services, although closely

⁷ The split-run advertising practice under consideration involves the supply of advertising services by foreign publishers to foreign or Canadian advertisers in Canada. It could fall under any of the modes of delivery identified in Articles I:2(a), (b) or (c) of the GATS.

⁸ See *1995 National Trade Estimate Report on Foreign Trade Barriers* (Washington, D.C.: United States Trade Representative, 1995) at 38 (Exhibit C).

⁹ The terms "directly or indirectly" appeared initially in Article III:2 for ease of translation into French of an English draft proposal. In initial discussions at the London session of the Preparatory Committee, it was suggested that while "directly or indirectly" in the US Draft Charter referred to "taxes and other internal charges imposed on or in connection with like products", the rapporteur in the Working Party on Technical Articles had used the phrase "directly or indirectly" instead, owing to the difficulty of obtaining the exact equivalent in the French text. Proposal by United Kingdom, EPCT/C.II/W.5, at 5.

According to later discussions in Commission A at the London session of the Preparatory Committee (EPCT/A/PV/9, at 19; EPCT/W/181, at 3), the word "indirectly" covers a tax not on a product as such but on the processing of the product. The Panel report in *Japan - Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages* (Report of the Panel adopted on 10 November 1987, GATT Doc. L/6216, BISD 34S/83 at 118, para. 5.8 [hereinafter *Japanese Liquor Tax II*]) gave an interpretation of the term "indirectly" that is consistent with this reading:

"The Panel ... found that the wording "directly or indirectly" and "internal taxes ... of any kind" implied that, in assessing whether there is tax discrimination, account is to be taken not only of the rate of the applicable internal tax but also of the taxation methods (e.g. different kinds of internal taxes, direct taxation of the finished product or indirect taxation by taxing the raw materials used in the product during the various stages of its production) and of the rules for the tax collection (e.g. basis of assessment)."