

liability arises directly out of the services dimension of the publisher's business.⁵ The collection mechanism is designed to ensure that there is always a person in Canada from whom the tax can be collected. It is doubtful whether collection machinery should ever be used as a basis for characterizing the nature of a tax, and in the particular circumstances of this case it would be entirely inappropriate.

7. The question of whether the excise tax is covered by Article III:2 of the GATT 1994 by reason of the expression "indirectly" must be examined in light of the relationship between the GATS and the GATT 1994. To the extent that the two agreements cover measures that pertain to trade in services, it is essential to interpret the provisions of the two agreements so as to avoid or at least minimize any overlap between their respective disciplines, and thus to preserve the coherence of the system as a whole. Any such overlap could lead to divergences or conflicts between different provisions of the WTO Agreement that would have to be resolved in accordance with customary rules of interpretation of public international law.⁶ Given that the GATS is a more specific expression of the intention of WTO Members with respect to disciplines applicable to trade in services, it should prevail over the GATT 1994 in case of a true conflict, where the conflict relates primarily to trade in services. The more appropriate approach is clearly to interpret both agreements so as to minimize any overlaps and resulting conflicts, and thus to preserve the integrity and independence of each regime as the negotiators intended.

8. To determine which disciplines apply to a given measure, one must first examine the nature and object of the measure in question. Some relevant factors for such a determination are: the nature of the economic activity covered by the measure, the structure and effects of the measure and the intention of the measure. A measure may have different aspects and may, as a result, attract different disciplines under different agreements, but no single aspect of a measure should be subject to both disciplines at the same time. In any case at the margins of the two disciplines, Canada suggests that the dominant or essential characteristics of the economic activity at issue should control the determination of whether the GATT or the GATS is applicable.

9. In the present case, it is clear that the measure pertains to the marketing of advertising services. The tax is assessed on the value of the advertising services provided. The ultimate responsible taxpayer is the publisher in the publisher's capacity as a service provider. The tax is intended to prevent the penetration of the Canadian advertising market

⁵ In a hypothetical situation, where split-runs would be illegally imported into Canada despite the border prohibition, the Panel asked, in Question 2, if the publisher or the distributor could be subject to the excise tax. Should split-runs be imported notwithstanding Code 9958 of the *Customs Tariff*, both the publisher and the distributor could be subject to the tax. The publisher would be liable as a provider of advertising services. The distributor, who has to pay the tax, would have a right of recovery from the publisher.

⁶ *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article 3:2.