

Article III:8(b). The United States claims that Panel reports have uniformly found that the only subsidies permitted under Article III:8(b) are those involving actual payments made directly to domestic producers. As stated in Canada's First Submission⁴¹ and in the written version of its Oral Statement,⁴² the Panel reports referred to by the United States lend no support to its position.

52. The provision of reduced postal rates is a way of paying subsidies that is compatible with GATT 1994. The sole purpose of the government payments to Canada Post is to allow eligible Canadian publishers the benefits of reduced postal rates. The position held by the United States is based on a difference of form, not substance. The specific form in which the subsidy is paid is irrelevant to the operation of Article III:8(b), provided that actual payments are made. There is simply no analogy to tax preferences involving no payment at all, particularly in view of the need to preserve the integrity of Article III:2. In this case, the postal subsidy involves the Federal Government making payments to Canada Post four times a year in return for its undertaking to deliver eligible publications at the agreed reduced postal rates. The benefit of the subsidy flows directly to eligible Canadian magazine publishers.

53. Whether the subsidy is paid to Canada Post or directly to the publishers of magazines does not make any difference from an economic perspective – eligible publishers are the beneficiaries of the subsidy. The effect is the same except for the costs associated with managing the subsidy program, which would differ substantially. In practical terms, payments to individual publishers would be a cumbersome and ineffective method of delivering this subsidy. The administrative and financial burden of such a process would erode the benefits of the program. The current process – where the Department of Canadian Heritage provides Canada Post with an agreed-upon payment on a quarterly basis – is far more efficient in minimizing the administrative overhead related to the program. The United States has not pointed to a convincing reason why the Panel should adopt an interpretation of the GATT 1994 that would have the effect of replacing the current efficient system with an entirely new, costly and inefficient one – with no impact at all in terms of the competitive position of Canadian and U.S. magazines.

6. Code 9958 of Schedule VII to the *Customs Tariff* is justifiable under Article XX(d) of the GATT 1994

54. Code 9958 is a measure intended to secure the attainment of the objectives of section 19 of the *Income Tax Act*. The conformity of the *Income Tax Act* with the GATT 1994 is not being challenged. While the provision is not contested in this proceeding, Canada's

⁴¹ Paras. 116 and 119.

⁴² At 32-33.