

its First Submission that the provision of advertising services is a GATS matter.

4. In its Oral Statement, the United States alleged that the excise tax applies directly to magazines since the tax is applied to each split-run edition and on a "per issue" basis. The United States also alleged that the tax applies directly to magazines because it is imposed on persons who produce or trade in magazines (publisher, distributor, printer or wholesaler). It was argued as well by the United States that the tax applies "indirectly" to magazines in that it reduces the appeal of split-run magazines to Canadian readers by effectively eliminating advertisements of interest to them. Finally, the United States claimed that the measure affects the internal sale or use of split-run magazines contrary to Article III:4 of the GATT 1994.

5. Contrary to the allegations made by the United States, the tax is not applied directly to a split-run magazine and in particular it is not based on, or applied to, the price of a split-run magazine. As previously explained, the tax is applied to the value of advertising carried by each issue of a split-run magazine and is assessed against the publisher of the split-run magazine, as the seller of the advertising service. The expression "in respect of each edition" serves as a basis for determining and calculating liability that relates to advertising revenue as the subject matter of the tax. The significant point, which decisively identifies the subject matter of the tax, is that the tax is measured not in terms of the price of the magazine but in terms of the advertising revenues it generates.

6. The tax is imposed on the publisher in the publisher's capacity as a provider of advertising services. The tax is tied to the service provided rather than the good. The publisher is the person responsible for the payment of the tax. The distributor, the printer and the wholesaler have been identified as potentially liable where it would be impossible to collect the tax in Canada from the publisher. In such cases, the Act grants those persons a right of recovery against the publisher.<sup>4</sup> Accordingly, there is no doubt that the ultimate liability falls on the publisher, and because the *ad valorem* basis of the tax is advertising, this

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producer of just a convenience good; he became also the seller of a service, that of carrying the advertiser's message to a group of consumers..." (T. Peterson, *Magazines in the Twentieth Century* (Urbana: University of Illinois Press, 1964) at 27; see also *ibid.* at 69 (Exhibit B)).

<sup>4</sup> *Excise Tax Act*, R.S.C. 1985, c. E-15 as amended by S.C. 1995, c. 46, s. 41.3(2) (U.S. First Submission, Exhibit D). Where a person other than the publisher pays the excise tax in respect of a split-run edition, the person is deemed to have paid the tax on behalf of the publisher of the periodical. The legislation authorizes the person to recover the amount of the tax from the publisher in a court or to deduct or withhold the amount from any amount payable by the person to the publisher of the periodical. This is further reinforced by a split-run tax amendment that will exempt from the tax the first split-run issue of a magazine if the person who would otherwise be responsible for paying the tax is the distributor, printer or wholesaler.