

as ministers suggested, or take place at the WTO as part of a future set of comprehensive negotiations.

iv) *The Challenges Imposed by Global Trade and Investment Agreements*

The issue of trade and culture has presented challenges for Canadian policy-makers. The issue became of particular concern when Canada's 80 per cent excise tax (Bill C-103) on revenue from Canadian advertisers received by foreign companies publishing magazines in Canada was opposed by the United States. On March 11, 1996, the Clinton Administration announced that the United States would use the dispute settlement procedure of the WTO to challenge what the United States called discriminatory practices by the Canada that unfairly protect Canada's domestic magazine industry. The United States government charged that Canada was unfairly keeping American magazines, specifically *Sports Illustrated* of Time Warner Inc., out of the Canadian market.

Initially, the WTO ruled against three out of four of the measures that Canada used to protect its magazine industry. On appeal, Canada lost on all four measures. These measures were the 80 per cent excise tax, a rule against the importation of split-run magazines that direct more than five per cent of the advertisements to Canadian audiences, differentiated postal rates, and the postal subsidy. Section 19 of the Income Tax Act, which disallows the deductibility of advertising expenses in foreign-owned magazines aimed at the Canadian market, was not challenged and thus remains in place. The WTO ruled against Canada because it found that magazines were a good comprised of two kinds of content – editorial and advertising. Because magazines were found to be a good, not a service, Canada was required to treat like products the same.

The WTO panel was careful to state that the ruling did not mean that countries could not have cultural policy; however, this decision leaves Canada scrambling for a new set of cultural policies for the magazine industry. This *Sports Illustrated* decision is important to the film industry, not only in that it leaves Canada concerned about how well its policies will comply with its international trade and investment obligations, but also in that American resolve to continue to press for changes the United States industry has long desired may increase.

These general concerns are important when thinking about a film policy, but this WTO decision also had a more specific consequence. It raised the issue of what is a good and what is a service. In the case of split-run magazines, the advertisements were found to be goods although Canada argued that they were services. This issue also came up when the United States challenged the European Union at the WTO on its regime for the importation, sale and distribution of bananas. While the GATS and GATT 1994 were intended to address different subject matter, they seem to both be applicable with respect to certain measures, which involve a