

119. Based on the panel report on the *EEC - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-feed Proteins*,<sup>80</sup> the United States argues that subsidies not paid directly to producers are not paid to them "exclusively" within the meaning of Article III:8(b). The word "exclusively" as used in this provision is concerned with the distinction between "domestic" as opposed to "non-domestic" producers, not whether third parties benefit from the subsidies. Whether an incidental benefit might be conferred upon Canada Post from the subsidy payment is irrelevant. Under the interpretation of this clause suggested by the United States, virtually any subsidy payment that would confer a third party benefit, however minimal, would be non-compliant. This was surely not the intended application of the exemption. Subsidies have an economic impact on third parties in almost all circumstances. The definition of the term "exclusive", proposed by the United States, would lead, in practical terms, to the nullification of the Article III:8(b) exemption.

## V. CONCLUSIONS

120. On the basis of the foregoing, Canada submits and asks the Panel to find that:

1. Article III of the GATT 1994 does not apply to Part V.1 of the *Excise Tax Act*.
2. Even if the panel decides that Article III of the GATT 1994 does apply, Part V.1 of the *Excise Tax Act* does not violate Article III of the GATT 1994;
3. Code 9958 of the *Customs Tariff* is justifiable under Article XX(d) of the GATT 1994;
4. the national treatment obligation of Article III:4 of the GATT 1994 does not apply to the commercial publications postal rates charged by the Canada Post Corporation because these rates are the result of generally accepted commercial and marketing practices and are not influenced by government policy; and
5. the funds paid by the Department of Canadian Heritage to the Canada Post Corporation in order to grant Canadian publishers of periodicals reduced postal rates are allowable subsidies under Article III:8(b) of the GATT 1994.

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80. *EEC - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-feed Proteins* (Report of the Panel adopted on 25 January 1990), GATT Doc. L/6627, BISD 37S/86 at 124-125, paras. 137-141. The United States also refers to *Italian Discrimination Against Imported Agricultural Machinery* (Report of the Panel adopted on 23 October 1958), GATT Doc. L/833, BISD 7S 60 at 64, para. 14.