

116. The decision of the Panel in *United States - Malt Beverages*⁷⁸ lends no support to the U.S. position. The Panel held that the expression "payment of subsidies" applies only to direct subsidies and not to other kinds of subsidies such as tax credits or tax abatements. The Panel was concerned solely with the distinction between subsidies, tax remissions and differential taxation rates, because a failure to make that distinction would destroy the effect of Article III:2. The formal distinction between taxation measures - benefits not involving direct expenditures by government - and subsidies is vital to the operation of the Article as a whole. Canada's postal subsidy meets the requirement of directness, in the sense in which that concept is used in the *U.S. Malt Beverages* decision, because a payment by government for the exclusive benefit of the producers is being made. It is only the mechanics of payment that are indirect.

117. The position held by the United States is therefore 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 a payment is made by the government for the exclusive benefit of domestic producers.⁷⁹ Before being granted the privilege of posting using funded postal rates, a publisher must sign a service agreement with Canada Post. This simple fact is evidence that publishers are direct beneficiaries. Canada Post is an intermediary, not the beneficiary. Whether the subsidy is paid to Canada Post or paid directly to the publishers, the economic effect is the same, namely that the eligible publishers are the beneficiaries of the subsidy.

118. If an eligible Canadian publisher of a monthly magazine were to receive the payment, the advantages this publisher enjoys relative to foreign competition would be essentially unchanged. Canadian publishers would find themselves in the same position as they are in now, namely with an advantage over their foreign competitors. 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. Therefore, the Department of Canadian Heritage provides Canada Post with an agreed-upon payment on a quarterly basis. The current process is far more efficient in minimizing the administrative overhead related to the program.

78. *United States - Measures Affecting Alcoholic and Malt Beverages* (Report of the Panel adopted on 19 June 1992), GATT Doc. DS23/R, BISD 39S/206 [hereinafter *U.S. Malt Beverages*].

79. The *U.S. Malt Beverages* Panel read subparagraph 8(b) having regard to the context of the whole of Article III but, except in the context of taxation measures, it was never stated that for every subsidy to qualify, the payment must be made directly to domestic producers. The panel simply said that the words "payment of subsidies" refer only to direct subsidies involving a payment, not to other subsidies such as tax credits or tax reductions (*ibid.* at 271, para. 5.8).