deliberate reasoning for Members to understand how it arrived at its decision. In this case, the Appellate Body was asked to rule on the applicability of the GATT and GATS provisions to the excise tax. We are disappointed that the Appellate Body did not provide considered reasoning on the question of the excise tax as a measure affecting advertising services. Instead, the decision on this critical point appears to rest largely on the Appellate Body's interpretation of policy linkages between the tax on advertising and the border measure targeting magazines *per se*.

14. It is clear from the report of the Appellate Body that WTO Members have to reflect upon the issue of the relationship between obligations under the GATT 1994 and commitments under the GATS. In the absence of agreement among Members on the respective scope of the two Agreements, we will face an increasing number of disputes that leave the Appellate Body to make this determination. Canada points to the recent *EC-Bananas* decision, and underscores the need for further attention to this issue, if our work in the services area is to make meaningful progress.

d) GATT Article III

15. The Appellate Body considered that no decision on the "like products" issue could properly be made because of the absence of any adequate analysis in the Panel report. If it was impossible to make a determination of "likeness" for the purpose of Article III:2, first sentence, in view of the absence of an adequate analysis in the Panel report, then *a fortiori* it was also impossible to determine whether the products were "directly competitive or substitutable" for the purpose of the second sentence. The Panel report contained no analysis of the second sentence at all, which is also to be addressed on a case-by-case basis, according to the *Japan-Alcoholic Beverages* case. Canada questions the Appellate Body's decision to refuse to rule on an issue because the Panel analysis is inadequate, but then to rule on a separate issue that the Panel failed to analyze at all.

16. The Appellate Body's finding on the "like products" issue was, in part, based on its analysis of the *Sports Illustrated* and *Harrowsmith* examples, neither of which was relevant to the case. This indicates a fundamental misunderstanding of the facts. The Sports Illustrated split-run was a *domestic* and not an imported product. This was common ground between the parties. The Appellate Body also based its conclusion on the fact that the U.S. edition of Harrowsmith Country Life, a Canadian-owned periodical formerly published in the United States, had ceased production. Since this product was never exported to Canada, and was not destined for a Canadian readership, it cannot be sustained that the closure of the U.S. edition amounts to a protective application of the tax. Thus the measure was to have an effect only on a domestic operation.

17. The Appellate Body assumed at p. 19 of their Report that the