

Canada imposed the 80 per cent tax on split-run edition periodicals in order to protect Canadian production of periodicals which are not split-run editions.

86. As noted above, periodical publishers compete in two spheres: the advertising market and the consumer market. Split-runs and other domestic magazines may indeed compete directly in the advertising market but, as stated earlier, that market is not subject to the disciplines of the GATT 1994. The question to be decided is whether the magazines under consideration are "directly" competitive or substitutable as consumer goods – which question, in this context, requires an evaluation of their interchangeability as information vehicles. The use of the adverb "directly" to modify the terms competitive and substitutable specifically qualifies the type of competition that is required between imported products and domestic products, and the level of substitutability that must exist between these products.

87. Canadian periodical consumers have a demand for periodicals containing information that specifically addresses their interests. Canadian magazines contain information developed for and directed to the interests of Canadian consumers over a broad range of genres. Split-runs and magazines with editorial material developed for the Canadian market cannot be considered direct substitutes as information vehicles; and for the same reason they are not in *direct* competition. They are not interchangeable, and would not therefore be perceived as alternatives by consumers.

88. One of the elements of substitutability – a shared characteristic with the test for like products – is the products' end-use. As noted in the argument on the first sentence of Article III:2, consumer end-use in the context of magazines is specific to content. To the extent that Canadian consumers may choose between a split-run edition based on content developed for foreign markets and a periodical with editorial content developed for the Canadian market, they do not regard the two as interchangeable. Their content is significantly different, and they accordingly fulfil different needs and perform distinct functions. They cannot be considered substitutable in terms of end-use.

89. Therefore, contrary to the U.S. contention, the two products are not directly competitive or substitutable within the meaning of the second sentence of Article III:2, as interpreted by Ad Article III:2.

(ii) So as to afford protection to domestic production

90. Canada is not applying the excise tax to imported periodicals so as to afford protection to the Canadian production of periodicals. Part V.1 of the *Excise Tax Act* has no effect on the ability of foreign periodicals to enter Canada and to hold a very large share of the Canadian market. The *Excise Tax Act* applies to all split-run periodicals – wherever produced – in the same way. Contrary to the U.S. contention, the purpose of Part V.1 of the *Excise Tax Act* is not to protect the production of periodicals in Canada, but to prevent the diversion of advertising revenues to magazines based on content produced for foreign markets, and thus to ensure the production of editorial content for Canadians.