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III. BACKGROUND, FACTS AND ISSUES

A. Trade and Cultural Development

6. From the time of the O'Leary Commission¹ in the early 1960s to the Task Force on the Canadian Magazine Industry in the early 1990s, successive federal governments have recognized the importance of a Canadian magazine industry. The federal government has long been committed to ensuring that Canadians have access to Canadian ideas and information through the medium of magazines. This case is about the measures Canada has taken to reconcile the objectives of trade and national identity by adopting policy instruments that have been carefully designed to comply with its commitments under the *Marrakesh Agreement Establishing the World Trade Organization* (the "WTO Agreement") while ensuring the survival of a vital cultural industry. It is also about an attempt by the United States to achieve, through dispute settlement, results that are outside the framework of the WTO Agreement and that it failed to obtain in the Uruguay Round of multilateral trade negotiations.

7. In its 1987 publication, *Vital Links: Canadian Cultural Industries*,² the Government of Canada analyzed its cultural industries. The implications of globalization in the culture and communications field are described as follows:

"The concern is not with the ease of access to the products of other cultures. It is rather with the difficulty of access to our own products, a difficulty that is primarily a function of the economics of the cultural industries, which place the cheaper, mass marketed, imported products at such a distinct advantage. The effects are economic, to be sure, but our concerns are cultural - the need to sustain for Canadians an adequate choice."³

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1. Canada. *Report of the Royal Commission on Publications* (Ottawa: Queen's Printer, May 1961) (Chair: G. O'Leary) [hereinafter *O'Leary Report*] (First Submission of the United States of America, Appendix A [hereinafter U.S. First Submission]).
 2. Canada. Dept. of Communications. *Vital Links: Canadian Cultural Industries* (Ottawa: Minister of Supply & Services, 1987).
 3. *Ibid.* at 11 (Exhibit A).