

Round. The *de facto* exclusion of split-runs from the general tariff classification means at the very least that the U.S. position can derive no support from tariff classification.<sup>15</sup>

18. The United States has suggested that the Canadian approach to like products would threaten the foundations of the international trading system, allowing governments to favour imported goods designed exclusively or primarily for their markets. In reality, the Canadian approach has no such implications. It is inappropriate to generalize. What is true of magazines is not necessarily true of other products. There are few if any physical products that can be identified with a specific national market through their inherent properties (as opposed to traditional consumer tastes, which is an entirely different matter). The spectre raised by the United States is based on an unwarranted generalization, an extrapolation from magazines to products in general. Any such generalization is incompatible with the "case-by-case" approach mandated by the jurisprudence.

19. The United States, in its Oral Statement, kept treating magazines as if they were ordinary items of merchandise trade and ignoring their distinctive feature. The distinguishing trait of a magazine is found in its editorial content and not the physical medium in which the content is captured. Unlike other products that are distinguishable on their physical qualities, the editorial content of a magazine is its chief distinguishing characteristic. The editorial content makes magazines more individualized than other manufactured products and, as a result, they possess sufficiently strong distinctive features to warrant distinguishing them from other goods for policy purposes.

20. A table<sup>16</sup> comparing the editorial content of the October 7, 1996 issue of *Maclean's*, *TIME Canada* and *TIME U.S.* provides compelling evidence. *Maclean's* is a news magazine produced in Canada for the Canadian market, *TIME Canada* is a U.S. news magazine produced in Canada for the Canadian market<sup>17</sup> and *TIME U.S.* is a U.S. news magazine produced in the United States for the U.S. market. While all three magazines contain a wide variety of topical news items, the table illustrates that the editorial content of *Maclean's* is distinct from the editorial content of *TIME* and *TIME Canada*. Apart from the two international news features common to the three magazines, one on peace in the Middle East and the other on the political impact of President Yeltsin's health, *Maclean's* and *TIME Canada* provide very different coverage of the week's issues. Without in any way neglecting extensive coverage of international events, *Maclean's* editorial content focuses almost solely on news items concerning, or in some way related to, Canadian issues, individuals or interests. In contrast, the editorial content of *TIME Canada* features news items concerning, or in some way related to, issues, individuals or interests of the United States, again without neglecting coverage of international news. In fact the table shows that while *TIME Canada*

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<sup>15</sup> This paragraph addresses issues raised by the Panel in Question 6.

<sup>16</sup> See Exhibit D.

<sup>17</sup> *TIME Canada* is grandfathered pursuant to section 39 of the *Excise Tax Act*.