

40. The United States, in its oral statement, contended that the nature of the legal relationship between the Government and Canada Post and the degree of control of the Government over the Corporation were such that the commercial postal rates are necessarily regulations within the meaning of Article III:4 of the GATT 1994. The United States also argued that Canada Post's "discrimination" could not be justified on the basis of commercial motivation. Canada disagrees with these contentions.

41. Government ownership is not in itself sufficient to qualify the practices of an enterprise as regulations for the purposes of Article III:4 of the GATT. The independent nature of Canada Post's commercial operations for the distribution of publications and the competitive environment within which it operates and sets its rates remove such rates from the provisions of Article III:4.

42. Although at one time the Post Office was an integral part of the Government of Canada and its rates were set by statute and regulation, that relationship was changed in a fundamental way in 1981. Concerned with issues relating to service, management, labour relations and the financial performance of the Post Office Department, the Government decided to turn over the postal administration to a Crown corporation with a commercial orientation and an independent management charged with attaining financial self-sufficiency.³⁰ Significantly, the *Canada Post Corporation Act* gave the Corporation the powers of a natural person, an attribute more typical of a private sector corporation than of traditional Crown corporations. The *Financial Administration Act* later confirmed the Corporation's status as an entity expected to operate in a competitive environment, not to be dependent on appropriations, earn a return on equity and pay dividends to its shareholder.

43. At the time of the creation of Canada Post Corporation, there were those who suggested that it remain under the direct control of the Government. It was proposed that its activities be overseen by the Postmaster General assisted by a Secretariat. Had that been the case, the U.S. contentions that Canada Post policies are in reality government regulations or requirements might be a little more plausible. However, what did happen was that supervision of the Corporation was entrusted to a board of directors composed of independent outside directors and officers of the Corporation (none of whom are civil servants). The Board, like traditional private sector boards of directors, is empowered to establish the general policy of the Corporation, including the making of decisions concerning finance, personnel management and commercial orientation, without the restrictions inherent in government departments. The Board has, since incorporation, pursued the goal of financial self-sufficiency by allowing management the latitude, in commercial operations, to generate revenues through rate and product management and to manage the Corporation's expenditures in a manner consistent with any competitive enterprise, essentially free of

³⁰ See "The Mandate of Canada Post Corporation and its Development" (Exhibit E). This paper describes the Canada Post's mandate and its development from 1981 to present. It surveys the process of the enactment of the *Canada Post Corporation Act*, and subsequent reviews, statutory changes and decisions of courts and administrative agencies relating to the mandate of Canada Post.