

**FIRST WRITTEN SUBMISSION OF CANADA
SUBMITTED TO THE PANEL
ESTABLISHED BY THE DISPUTE SETTLEMENT BODY (DSB)
OF THE WORLD TRADE ORGANIZATION (WTO)
TO EXAMINE THREE CANADIAN MEASURES CONCERNING PERIODICALS**

I. INTRODUCTION

1. On June 19, 1996, the DSB agreed to establish a panel to examine the complaint filed by the United States regarding three Canadian measures concerning periodicals. The panel's terms of reference, as agreed to by the parties, are as follows:

"To examine, in the light of the relevant provisions of the General Agreement on Tariffs and Trade of 1994 (the 1994 GATT) cited in document WT/DS31/2, the matters referred to the DSB by the United States in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this agreement."

II. SUMMARY

2. The specific matters before the panel concern the following measures: (1) the excise tax on advertising contained in split-run periodicals provided for by Part V.1 of the *Excise Tax Act*; (2) Code 9958 of the *Customs Tariff* barring the entry into Canada of certain periodicals; and (3) the postal subsidy and the commercial postage rates charged to Canadian publishers.

3. Article III of the GATT 1994 does not apply to Part V.1 of the *Excise Tax Act*. These statutory measures pertain to advertising services. Such measures fall under the *General Agreement on Trade in Services* ("GATS") and not under the GATT 1994. No specific GATS commitments were made by Canada concerning advertising.

4. If the Panel determines that Article III of the GATT 1994 is relevant, then Article III:2, first sentence does not apply, because split-runs and magazines with editorial content developed for the Canadian market are not "like products". Article III:2, second sentence does not apply either given that the two goods are not directly competitive or substitutable products and that Canada did not adopt the measures so as to afford protection to the Canadian production of magazines.

5. Code 9958 of the *Customs Tariff* is justified as a necessary measure within the meaning of Article XX(d). National treatment rules do not apply to commercial postal rates