

CANADA – PERIODICALS¹

(DS31)

| PARTIES | | AGREEMENT | TIMELINE OF THE DISPUTE | |
|-------------|---------------|---------------------------|-----------------------------|---------------|
| Complainant | United States | GATT Arts. III, XI and XX | Establishment of Panel | 19 June 1996 |
| | | | Circulation of Panel Report | 14 March 1997 |
| Respondent | Canada | | Circulation of AB Report | 30 June 1997 |
| | | | Adoption | 30 July 1997 |

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Tariff Code 9958, which prohibited the importation into Canada of any periodical that was a “special edition”²; (ii) the Excise Tax Act, which imposed, in respect of each split-run edition³ of a periodical, a tax equal to 80 per cent of the value of all the advertisements contained in the split-run edition; and (iii) the postal rate scheme under which different postal rates were applied to domestic and foreign periodicals.
- **Product at issue:** Imported periodicals (from the United States) and domestic periodicals.

2. SUMMARY OF KEY PANEL/AB FINDINGS⁴

- **GATT Art. XI (prohibition on quantitative restrictions) and Art. XX(d) (exceptions – necessary to secure compliance with laws):** The Panel found that Tariff Code 9958, which prohibited the importation of certain periodicals, violated Art. XI, and was not justified under Art. XX(d) because it could not be regarded as a measure to secure compliance with Canada's Income Tax Act.
- **GATT Art. III: 2, first and second sentences (national treatment – taxes and charges):** The Appellate Body reversed the Panel's finding that imported split-run periodicals and domestic non-split-run periodicals were “like products” (Art. III:2, first sentence). The Appellate Body concluded that the Excise Tax Act was inconsistent with Art. III:2, second sentence because (i) imported split-run periodicals were “directly competitive or substitutable” with domestic non-split-run periodicals; (ii) imported and domestic products were not similarly taxed; and (iii) the tax was applied so as to afford protection to domestic products.
- **GATT Art. III: 4 (national treatment – domestic laws and regulations) and III:8(b) (national treatment – subsidies exception):** The Panel found that the application of discriminatory postal rates for domestic and imported periodicals under Canada's postal rate scheme violated Art. III:4. The Appellate Body reversed the Panel's further finding that this postal scheme, however, was justified under Art. III:8(b), on the ground that the kinds of measures covered by Art. III:8(b), and thus exempt from the obligations of Art. III, are “only the payment of subsidies which involves the expenditure of revenue by a government”. Under Canada's postal rate scheme at issue, however, no subsidy payments were made to private entities, and certain companies simply received a reduction in postal rates.

¹ *Canada – Certain Measures Concerning Periodicals*

² “Special edition” is a periodical that “contains an advertisement that was primarily directed to a market in Canada and that does not appear in identical form in all editions of that issue of the periodical that were distributed in the periodical's country of origin”.

³ The Excise Tax Act defines “split-run edition” as an edition of an issue of a periodical: (i) that is distributed in Canada; (ii) in which more than 20 per cent of the editorial material is the same or substantially the same as editorial material that appears in one or more excluded editions of one or more issues of one or more periodicals; and (iii) contains an advertisement that does not appear in identical form in all of the excluded editions.

⁴ Other issues addressed: applicability of the GATT and/or the GATS (Excise Tax Act); status of panel finding not appealed; Appellate Body's completion of a panel's analysis.