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COMMUNICATION FROM THE UNITED STATES

Audiovisual and Related Services

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. The United States presents this proposal on audiovisual and related services for consideration by all Members. The proposal is intended to provide a framework for future work in the WTO that will contribute to the continued growth of this sector by ensuring an open and predictable environment that recognizes public concern for the preservation and promotion of cultural values and identity. At the same time, the proposal is intended to stimulate discussion of the significant role that the audiovisual sector plays in the digitally networked society.

II. THE "NEW" AUDIOVISUAL SECTOR

2. The audiovisual sector in 2000 is significantly different from the audiovisual sector of the Uruguay Round period when negotiations focused primarily on film production, film distribution, and terrestrial broadcasting of audiovisual goods and services.

3. New technologies have given consumers worldwide access to a multitude of entertainment and information services and have stimulated the growth and development of audiovisual services and products from around the globe. Digital compression is providing less expensive means of creating audiovisual works while broadband capacity is opening opportunities for lower-cost distribution. The audiovisual sector today includes an international array of content producers and program packagers utilizing not just traditional single channel broadcasting, but new media, such as cable, Direct to Home satellite, and digital networks to distribute content locally and also internationally (see Annexes A and B).

4. At the same time as new technologies have transformed the audiovisual sector, the audiovisual sector is playing a role in fostering new technologies. Electronically delivered audiovisual products and services, for example, which increase use of the network, are helping to create an environment that will encourage investment in the digital networks of tomorrow. The role of commercial entertainment in the creation and maintenance of advanced telecommunications infrastructure in turn benefits the development and distribution of local culture.

III. TRADE RULES AND THE AUDIOVISUAL SECTOR

5. The debate over the audiovisual sector in the WTO, whose four cornerstones – the GATT, the GATS, TRIPs and dispute settlement - apply to the audiovisual sector, has sometimes been framed as an "all-or-nothing" game. Some argue as if the only available options were to exclude culture from the WTO or to liberalize completely all aspects of audiovisual and related services. Presenting such stark options obscures a number of relevant facts.

6. First is the fact that business and regulatory considerations affect the ability to make and distribute audiovisual products, both to domestic and foreign audiences. Creating audiovisual content is costly, and commercial success is uncertain. Access to international markets is necessary to help recoup production costs. Predictable and clearly defined trade rules will foster international exhibition and distribution opportunities and provide commercial benefits that audiovisual service providers must have to continue their artistic endeavours.

7. Second, the argument implies that because the audiovisual sector may have special cultural characteristics, the sector should not be subject to the trade disciplines imposed on other service sectors. Such an argument neglects that other sectors also have unique characteristics for the purpose of fulfilling important social policy objectives and that the GATS has shown the flexibility to accommodate such specific concerns. For example, in the Annex on Financial Services, regulators were given exceptional discretion to take prudential measures to ensure, *inter alia*, the integrity of their financial system. Similarly, in the basic telecommunications Reference Paper, regulators insisted that the vital goal of providing universal service could not be sacrificed in the name of trade liberalization.

8. The "all-or-nothing" approach to the audiovisual sector in the WTO implies that trade rules are somehow too rigid to take into account the special cultural qualities of the sector. This is not the case:

– GATT Article IV provides a special, and unique, exception for cinematic films to GATT national treatment rules. In 1947, in recognition of the difficulty that domestic film producers faced in finding adequate screen time to exhibit their films in the immediate post-World War II period, GATT founders authorized continuation of existing screen-time quotas. It is worth noting that the scarcity of outlets available to local film producers to exhibit their films has in large part been alleviated by multiplex cinemas and multichannel TV, and will be further aided in the digital Video on Demand context.

– Today, in the WTO, when governments schedule commitments for audiovisual, or for any service sector, they have the flexibility to make full or partial commitments, should they so desire. Even when countries take commitments, they may continue to regulate services covered by commitments, so long as the regulation is not administered in a way that represents an unexpected trade barrier.

– Additionally, in both the GATS (Article XIV(a)) and GATT (Article XX(a)), the general exception for measures necessary to protect public morals provides further reassurance for Members concerned that commitments relating to content mean that they will not be able to apply regulations intended to preserve public morality.

– Finally, in its current form, the GATS does not prevent governments from funding audiovisual services, a sensitive issue for many Members where local theatrical film production, for example, is dependent on government support. While the GATS provides for future negotiations to develop disciplines on subsidies that distort trade in services, there is no presupposition as to what those provisions will contain. (For further discussion of this issue, see section C(3) below).

9. The choices are not, nor have they ever been, a choice between promoting and preserving a nation's cultural identity and liberalizing trade in audiovisual services. Especially in light of the quantum increase in exhibition possibilities available in today's digital environment, it is quite possible to enhance one's cultural identity and to make trade in audiovisual service more transparent, predictable, and open. Indeed, as indicated in the above discussion on the role of the new audiovisual sector in helping to attract investment for advanced infrastructure, the two objectives may reinforce each other.

IV. A NEGOTIATING PROPOSAL FOR THE AUDIOVISUAL SECTOR

10. Our negotiating proposal for the audiovisual sector consists of three interrelated elements:

(i) Members need to review the different activities that constitute the audiovisual sector today to develop a clear, accurate and comprehensive understanding of where the different facets of the sector are classified in MTN.GNS/W/120 (See Annex A). Existing classifications used by many Members in scheduling their commitments may not cover some of these services, or may create uncertainties as to which services are covered. In other cases, two or more existing sub-categories may extend to the same service. In carrying out this review, Members need to respect the principle of technological neutrality, which is a fundamental tenet of the WTO, and must refrain from pursuing reclassifications that could erode existing commitments.

(ii) GATS disciplines are relevant to the audiovisual sector, as they are to virtually any services sector. We seek negotiated commitments for the audiovisual sector that establish clear, dependable, and predictable trade rules with due account taken of the sector's specific sensitivities.

(iii) In conjunction with negotiated commitments for audiovisual services, Members may also want to consider developing an understanding on subsidies that will respect each nation's need to foster its cultural identity by creating an environment to nurture local culture. To this end, many Members subsidize theatrical film production. There is a precedent in the WTO for devising rules which recognize the use of carefully circumscribed subsidies for specifically defined purposes, all the while ensuring that the potential for trade distortive effects is effectively contained or significantly neutralized.

Annex A

A Summary List of Audiovisual and Audiovisual Related Service Activities

Note: In the following list, the United States is describing the complex, diverse set of activities that may be considered to form part of today's audiovisual sector, but is not asserting that these services should be classified as audiovisual services in MTN.GNS/W/120. Some of the following activities are currently classified in MTN.GNS/W/120 as audiovisual services, while others are classified as distribution, telecommunications, business, leasing, or recreation services. An asterisk indicates those services sectors that do not appear to be covered by an existing GATS classification, or that may be covered by more than one GATS classification.

1. Theatrical Motion Pictures

- Production of films
- Pre- and post-production services
- Duplication of prints
- Distribution (licensing) of films
- Delivery of motion pictures to theatres via specialized truck delivery services or via satellite or via digital networks*
- Exhibition of films/operation of cinemas*

2. Television

- Creation (production) of content
- Program packaging, i.e., acquiring distribution rights to programming of others, arranging programming in an attractive stream, selling schedule stream, advertising, etc.
- Sale of advertising time by programmers, broadcasters, cable service providers, Direct to Home service providers, or converged system operators

3. Home Video Entertainment

- Production of content
- Duplication/Reproduction of the tape/optical media product*
- Distribution of home video entertainment to general merchandise stores for sales of programming on any format for resale to home consumer and distribution directly to home consumers*
- Leasing of home video entertainment to video rental stores for rental/viewing of content at home or to other business customers (airlines, bus companies, etc.)

4. Transmission services

- From producers to broadcast stations, cable headends, satellite uplink stations,* and to end-users by:
  - analog or digital broadcast
  - Direct-to-Home satellite services*
  - Multichannel Multipoint Distribution Systems (wireless) cable systems*
  - or, increasingly, by "converged" transmission services which also transmit other forms of data, voice or other communications services*

5. Recorded Music

- Representation/signing of artists
- Production of sound recording
- Duplication/reproduction of tapes/optical media recording
- Distribution (licensing of rights) for broadcast on radio or television
- Distribution (wholesaling) of recorded music to intermediaries for sales of copies to consumers
- Distribution (retailing) of recorded music directly to home consumers.
- Program Packaging of channels of music for distribution on multi-channel transmission systems, or hotels, office buildings, etc .

Annex B

The International Scope of the Audiovisual Sector: An Indicative Listing

The set of economic activities related to audiovisual services is far broader, more varied, and international than was generally understood during the Uruguay Round negotiations. Below is a description of some of the activities and an illustrative list of the international services providers engaged in those activities, including:

– companies that distribute cinematic films like Hong Kong-based Golden Harvest;

– production service companies that provide state of the art camera, lighting and related production equipment like William F. White Ltd, a Comweb Group Company of Toronto or providers of sound stages and production facilities, like the Mediterranean Film Studio in Malta, or Pinewood Studios in the UK;

– computer animators like Penta-Media Graphics, headquartered in India with animation facilities in Singapore and the Philippines, that provide animation for films and television programs produced works; Oeilpouroeil, French company provide web animation services;

– dubbers like Covitec in Quebec;

– laboratories that print film negatives and duplicate film prints, for local use and regional export, include the Brazilian company Curt e Alex Associados;

– builders and operators of cinemas, including multinational chains like Village Roadshow of Australia and the Bert Group of Belgium that supply investment capital and the latest cinema technology and management techniques to markets around the world;

– TV broadcasters, like Mexico’s Televisa or Brazil’s Globo, who export programming;

– TV producers who also licence formats of successful television programs, such as the series broadcast in the U.S. as “Survivor,” originally produced as “Expedition Robinson” in Sweden, or “Big Brother,” which originated as a production of the Dutch-based, Spanish-owned company Endemol;

– Programmers, like Canal Plus or MTV, which export their programming services by licensing transmission rights to international cable and satellite service providers. Frequently, programmers orient their products for local markets, like ESPN India, which carries more cricket and polo than ESPN services in most other countries, or MTV, which has twenty-eight separate channels around the world, each of which is unique, with its own programming and a local identity;

– Direct to Home service providers that acquire the rights to program packages and provide these services to customers. Examples include Hong Kong-based Star TV and Telefonica of Spain;

– Telefonica of Spain, which produces more than 60,000 hours of Spanish-language television programming slated for distribution in Latin America and Spain and also owns and operates the satellites that transmit the programming;

- In addition, programmers, commercial broadcasters, cable and Direct to Home companies are also major sellers of advertising time for local and international advertising;

- The home entertainment industry provides entrepreneurial opportunities for thousands of locally-owned video stores;

- Local companies duplicate pre-recorded video tapes in most markets. For optical media format, companies acquire rights to reproduce music, films or video games on compact discs, video compact discs, Digital Video Discs and other formats, and export the products worldwide. Examples include Cinram, a Canadian-owned company that also owns facilities in Mexico, the US, France, Spain, and the UK;

- Companies that formerly concentrated solely on telephony services, like British Telecom and Japan’s NTT, now transport digitized audiovisual goods and services. Finland’s Nokia uses mobile, fixed and Internet Protocol broadband networks and services to transport audiovisual content to customers;

- Former “utility companies,” like Vivendi, have announced plans to offer digitized audiovisual products over the Internet.

In short, there are today a wide range of companies whose converging functions and technologies transport a wide range of content, including films, music, news, games, and other forms of entertainment and information to customers. One of the challenges we shall face in the coming services negotiations will be to ensure that the different facets of audiovisual and audiovisual-related services, many of which are relatively new and offered internationally for the first time, are appropriately addressed.

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