

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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APPLICATION OF GATT TO INTERNATIONAL TRADE IN TELEVISION PROGRAMMES

Report of the Working Party

1. At the request of the United States delegation the CONTRACTING PARTIES at their nineteenth session appointed a Working Party to examine the question of the application of the General Agreement to international trade in television programmes (SR.19/11, page 182).
2. The Working Party was established with the following terms of reference and membership:

Terms of reference

- (i) To examine the relation between the existing provisions of the GATT and measures affecting international trade in material for showing on television programmes.
- (ii) In the light of this examination, to consider whether these provisions adequately deal with the problem of access to markets and, if not, what action should be taken in the matter.
- (iii) To report their findings and recommendations to the CONTRACTING PARTIES.

Chairman Mr. E. Emmel (Germany)

<u>Members</u>	Austria	Germany, Federal Republic of
	Australia	Japan
	Brazil	Sweden
	Canada	United Kingdom
	France	United States

The Governments of Belgium, Italy and Switzerland, together with the United Nations and the Organisation for Economic Co-operation and Development, were represented by observers.

3. The Working Party had before it documents L/1646, L/1615, SR.19/5, SR.19/9 and SR.19/11.

4. The representative of the United States in recalling the main points on which his delegation at the nineteenth session had based their request for the consideration of the problem of international trade in television programmes, said that since the General Agreement was drawn up, recorded television programmes had become an important article of commerce, and their importance was growing rapidly. There has been continuing multiplication in the number of television stations and the number of broadcasting facilities in the world. Many of the television broadcasting stations were State owned but the proportion of independent commercially operated facilities was rapidly increasing. The treatment of imported recorded television programmes varied greatly from country to country. Some markets were relatively free for the importation of foreign programmes, others were severely restricted by governmental measures which limited the percentage of total viewing time that might be devoted to programmes not produced by domestic industry. It was felt that as television became more universally used it would justify the creation of domestic industries in many countries. The United States was concerned lest this should lead to a tendency by countries to protect these industries through the adoption of such stringent regulations as to exclude in large measure foreign television material.

5. With regard to the legal status under the General Agreement of restrictions against the importation of recorded television material now being used by certain countries and contemplated by others the United States delegation held that such regulations which limited the showing of imported television programmes fell within the obligations laid down in Article III. However, in view of the fact that even where television was not State owned, governments had quite properly taken a special interest because of television's importance as a cultural and informational medium, the United States would not insist on a legal interpretation of the obligations contained in Article III provided agreement could be reached on a practical formula for dealing with the present situation.

6. The Working Party examined the relation between the existing provisions of GATT and certain measures affecting international trade in television material. The Working Party considered the competence of GATT in relation to trade in television material. Some members expressed doubts on this score. In particular it was contended by some delegations that in many respects television bore more resemblance to a service than to a trade in physical commodities. The representative of France considered that it seemed somewhat arbitrary to distinguish between live programmes and certain programmes which had been recorded for technical convenience. This was a factor which had to be taken into account. The representative of the United States maintained that Article III clearly recognized the competence of GATT to deal with internal regulations which affected the use of imported material, though there

were undoubtedly other cases where such use would take the form of a service. The fact that Article IV had been established as an exception to Article III for cinematographic films confirmed this interpretation. Some members expressed doubt whether the GATT had sufficient material at its disposal to make it possible to study the question fully at this time. It was agreed, however, to leave aside for the time being both the question of the legal interpretation of Article III and the question of GATT's competence, so that the Working Party, without prejudice to the views of some members on the matter of competence or the appropriateness of the GATT as a mechanism for solving these problems, could carry through its examination.

7. The Working Party took note of the GATT provisions relating to tariffs and quantitative restrictions but concentrated its discussion largely on Articles III and IV of the General Agreement. In this connexion they noted that Article III of GATT lays down three basic rules concerning the treatment of foreign products affected by internal quantitative regulations. One is that in the case of the existence of internal quantitative regulations requiring the use of products in specific amounts or proportions, such regulations should not be applied to imported or domestic products in a way so as to afford protection to domestic production (paragraph 1). The second rule is that foreign products shall be accorded treatment no less favourable than that given to like products of national origin (paragraph 4), and the third rule is that no contracting party shall establish or maintain any internal quantitative regulation relating to the use of products in specific amounts or proportions which requires directly or indirectly that any specified amount or proportion of any product subject to this regulation must be supplied from domestic sources (paragraph 5). It was understood that the question of internal quantitative regulations was quite distinct from quantitative import restrictions maintained under other provisions of the General Agreement.

8. At the time of drafting Article III, it was, however, recognized that the application of these provisions to films could cause difficulties. The tariff was not an effective means of protecting a domestic cinematographic film industry and many countries had found it necessary to resort to quotas or screen time. In recognition of this, Article IV of the GATT, the provisions of which are an exception to those in Article III, permits the establishment of screen quotas in favour of films nationally produced. The provisions contained in sub-paragraph (d) that such so-called screen quotas "shall be subject to negotiation for their limitation, liberalization and elimination" had led to quota concessions by some contracting parties.

9. The United States representative stressed the importance of an international solution of the problem and thought that any such solution should aim at satisfying as far as possible the commercial interests of the countries exporting recorded television material as well as the cultural and other interests of the importing countries. He felt that this purpose would best be served by

the adoption of a resolution which would recognize the fact that contracting parties are regulating the use of imported television material and would presumably continue to do so. The resolution should recommend that contracting parties provide that the remaining viewing time open for foreign recorded material be "reasonable" and that due regard be paid to the allocation of favourable viewing hours. It should further recommend that the regulations should be applied without distinction among exporting contracting parties and should be negotiable.

10. Some members of the Working Party were prepared to accept the view of the United States representative that the problem under discussion could be approached by way of a recommendation of the CONTRACTING PARTIES. They pointed out that international trade in television material was unimportant when the GATT was drafted and that consideration had not therefore been given to the problems of applying the Agreement to this trade. Any recommendation should take into account the obvious analogy between films which were covered by the provisions of Article IV and recorded television material. They considered that the problem should be solved by recognizing this analogy and by stating that the provisions of Article IV should be applied mutatis mutandis.

11. They stressed the point that acceptance of a recommendation as drafted by the United States representative would involve an obligation by contracting parties to accord a reasonable or an equitable share in total television time and which would create a new obligation for contracting parties, going not only beyond the provisions of Article IV, but also beyond any other obligation contained in the GATT. They would not be in a position to subscribe to the recommendation as drafted by the United States representative. The latter replied that his proposal in fact would regularize deviation from an existing more stringent obligation in Article III, in much the same way in which Article XVII:2 represents an exception from the general obligations of Article XVII:1. Article XVII:2 excepts certain special trade from the general rule and substitutes the lesser obligation to accord "fair and equitable treatment" to such trade. The two approaches would be entirely parallel. Some other delegations did not accept this view.

12. The United States representative recognized that some countries might not wish to impose quotas as a means of reserving part of transmission time to the use of domestically produced material. He felt, however, that the method used for ensuring such reservations should be such that exporting countries could clearly appreciate its nature and effects and be able to use it as a basis for consultation and negotiation.

13. Members of the Working Party agreed that the imposition of domestic screen quotas of 100 per cent would not be inconsistent with the provisions of Article IV. However, the representative of the United States said that because of the inherent differences in the nature of the trade in television

material from that in cinematograph films, the United States could not accept that the starting point for any recommendation on the importation of television material should be the acceptance that importing countries could impose 100 per cent domestic quotas and only subsequently extend "reasonable access" as a result of negotiation.

14. There was also considerable discussion concerning the term "reasonable" on the ground particularly that it lacked the precision necessary to become the basis of an international obligation. The Austrian representative referred to countries which had short television hours and remarked that in his view it would be difficult to apply the criterion of favourable viewing time to such countries. The United States representative agreed that in countries with short viewing hours, all viewing hours could be considered favourable.

15. Most members thought that television techniques were developing so rapidly that, whatever decision was taken as to the relationship between the GATT and trade in television programmes, the position should be reviewed within two years in the light of developments and further experience.

16. The French delegation expressed the view that developments in television techniques were likely to be so rapid and major in character that it was premature to consider a recommendation to contracting parties at this stage. A fuller outline of the French delegation's view is contained in Annex II.

17. The Working Party felt that the importance and the number of questions involved were such that they could reach no final conclusion at this meeting. It was agreed that in order to facilitate further consideration, the Working Party should attach as an annex to this report, a draft recommendation with some suggested alternative proposals for circulation to contracting parties. It was recognized that further suggestions might well be made at a later stage.

18. The Working Party decided to meet again at about the time of the Council meeting in May after governments had had time to study this report, unless a reassessment of the situation by the Executive Secretary indicated that such a meeting would be inopportune at that time. It was also agreed that before the next meeting the secretariat should be requested to gather material on the work in this field by other international organizations for the information of the Working Party. The secretariat should also be requested to notify such other international organizations of the work being undertaken by the Working Party.

ANNEX I

DRAFT RECOMMENDATION

The CONTRACTING PARTIES, RECOGNIZING that, when the General Agreement was drawn up, international trade in television programmes was virtually non-existent so that the implications of the application of the relevant provisions of the General Agreement to such trade were not considered;

RECOGNIZING that trade in television programmes has similarities to trade in cinematograph films for which special provision was made in the General Agreement;

RECOGNIZING that, for reasons of public policy, contracting parties may find it necessary to ensure that television programmes include such a proportion of domestically produced material as inter alia to reflect the traditions and cultures of their countries;

ALTERNATIVE A

RECOMMEND that, where contracting parties find such internal quantitative regulations necessary, they adopt the following principles:

- (a) any such regulations should take the form of a reservation of a specified proportion of viewing time for programmes produced domestically;
- (b) any such reservation of time shall provide, for recorded programmes imported from other contracting parties, access to a reasonable proportion of viewing time, with due regard to favourable viewing hours; and
- (c) any such reservation shall be applied without distinction among exporting contracting parties and shall be negotiable; and

ALTERNATIVE B

RECOMMEND that, where contracting parties find such internal quantitative regulations necessary, they adopt the following principles:

- (a) any such regulations should take the form of a reservation of a specified proportion of viewing time for programmes produced domestically;

- (b) in any such reservation of time, contracting parties should, for recorded programmes imported from other contracting parties, avoid unnecessary damage to the commercial or economic interest of any other contracting party in providing access to viewing time, including favourable viewing hours; and
- (c) any such reservation should be negotiable; and

ALTERNATIVE C

RECOMMEND that, when contracting parties find it necessary to impose internal quantitative regulations governing the amount of domestically produced material which shall be used in television programmes, these regulations should take the form of quotas conforming to the same requirements as those established in Article IV for cinematographic films.

DECIDE to review this recommendation within two years in the light of developments in television techniques and the practices of contracting parties in applying this recommendation.

ANNEX II

VIEWPOINT OF THE FRENCH DELEGATION

The problem of international trade in material for showing on television programmes is inter alia influenced by the technical media at the disposal of the television organisations. In particular the prospect of an early bringing into operation of communication satellites is likely to have far-reaching effects in this field in conditions which cannot yet be determined. Further, certain important regional television organisations will soon have ~~at~~ their disposal a complete system of permanent links enabling them to increase considerably the number of live television programme exchanges.

The French delegation therefore, is of the opinion that it would at present be premature to propose to the contracting parties any recommendation. Its conviction is that in these conditions the study of this question as a whole should be taken up again as soon as the practical consequences of the new technical media which are expected to be introduced in a few months' time, are sufficiently known.