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Group of Negotiations on Services

WORKING GROUP ON AUDIOVISUAL SERVICES

Note on the Meeting of 27-28 August 1990

1. The Chairman welcomed delegations to the first meeting of the Working Group on Audiovisual Services and drew their attention to the objective of these informal consultations as contained in GATT/AIR/3045. Following the invitation by the Chairman, a secretariat representative briefed the Group on the main developments in the GNS. Then the Chairman opened the floor for general comments.
2. The representative of the United States said that her delegation was strongly opposed to any cultural exemption either in the general framework or in a sectoral annex. She asked whether it would be helpful to draw a line of acceptable behaviour between promoting national audiovisual industries and excluding foreign material. She indicated that the concerns of her delegation regarding cultural sovereignty and related matters were laid out in a non-paper which was distributed to participants.
3. The representative of the European Communities underlined the technological, economic and cultural importance of the audiovisual sector which, for the purposes of this discussion, should cover the activities of production, distribution and diffusion of cinema, video and television material. The representative of Egypt noted that this was the first time that the audiovisual sector was being discussed in the GNS context and emphasised the need to have a clearer idea of the coverage of the sector. The representative of India, in response to the statement made by the United States representative, considered that an exception based on cultural values would be necessary in the services framework, this might need to be elaborated in a possible annex on audiovisual services. The representative of Switzerland drew attention to the public service character of this sector in most countries, including radio and television. The liberalisation of trade in this area should not lead to a situation where the public was deprived of its freedom of access to diversified information. His delegation did not see the need for a general exception for the audiovisual sector although it was necessary to discuss to the specificities of the sector.
4. The representative of Australia considered that the draft framework provided sufficient flexibility for signatories to list reservations in those areas of the agreement, other than in m.f.n and transparency, where they were not able to comply with the relevant provisions. The most significant advantage of this approach was that reservations could be

unilaterally determined by individual governments. His delegation had not yet taken a position on whether or not an annotation relating to the audiovisual sector was necessary, but was considering the issue in the light of the following considerations: first, whether there was a problem in applying m.f.n or transparency to this sector; second, whether a derogation might be required in relation to rules on subsidies or national treatment; and, third, whether a clarification was required of the specific cultural characteristics of the audiovisual sector.

5. The representative of Sweden on behalf of the Nordic countries said that it was necessary to define what was meant by audiovisual services at an early stage in the discussion. She agreed that there was a public service element involved in this sector which should be related to the framework provisions on exclusive service providers; another set of relevant issues related to cultural identity, heritage and values and she considered that there was a definite need for countries to be able to preserve and promote activities in language areas that were too small to compete in all audiovisual activities on a commercial basis. She noted that this could imply the necessity to have annotations on subsidies in this respect. Furthermore, she thought that technical issues relating to frequency distributions and satellite transmission needed further discussion and coordination with the results of the working group on telecommunications.

6. The representative of Canada said that the audiovisual sector was one of the principal components of what he termed the cultural industries. The other components were broadcasting, print and sound recording. The whole sector should be covered by a services agreement. His delegation had proposed in the GNS a general exception based on cultural values which would apply to all existing and future cultural industries.

7. The representative of Hungary noted that article IV of the GATT dealt with screen quotas and the traffic of cinematographic films; in his view, this provision was largely based on cultural considerations. He raised the question of a possible overlap between the GATT and a future services agreement. In his view, the definition issue came up only if a sectoral annex was found to be necessary, something of which his delegation was not yet convinced. The representative of the European Communities considered that a general exception in the framework based on cultural values might be too broad. The representative of Austria, while stressing the public service character as well as the cultural aspects of the audiovisual sector, was flexible with regard to how these specificities could be taken into account.

8. The representative of Japan identified the cultural and trade aspects of audiovisual services to be respectively the two focal points of the Group's discussions. Though his delegation recognized the importance of preserving certain cultural values embodied in audiovisual works, he warned against using such values as a means to exclude the provision of audiovisual services by foreign providers. Trade and cultural concerns were not necessarily mutually exclusive and could be made compatible in order to allow consumers and audiences to have access to foreign cultures through

audiovisual works. He noted that Article IV of the GATT did not apply to TV and radio programmes.

9. The representative of Korea said that this working group should strive to identify specificities of the audiovisual services sector which might warrant an annex or annotation with respect to the application of the provisions of the framework. His delegation did not yet have any definitive position on the need for a comprehensive exception relating to cultural values. It would be useful to discuss the relationship of GATT's Article IV to the work of this working group and he agreed with others on the need to clarify the definition of audiovisual services.

10. The representative of the European Communities reiterated her delegation's commitment to a multilateral framework of universal coverage without any sectoral exclusions. Such a framework could provide for annotations relating to sectoral specificities which could not be addressed through the provisions of the general framework. In the process of internal liberalization pursued by the European Communities, certain cultural specificities had been identified (e.g. linguistic differences). Provisions had to be stipulated which recognized the existence of such cultural specificities and the need for some of them to continue to exist. Also, it had to be recognized that member-countries might need to take measures reflecting cultural specificities. Admittedly, due to its cultural content, liberalization of trade in audiovisual services had different implications than trade liberalization in many other sectors. Linguistic differences, for example, rendered certain audiovisual works and services non-interchangeable. The specificities of the sector had been widely recognized in agreements such as the OECD Invisibles Code, the OECD National Treatment Instrument, the Convention of the Council of Europe and the GATT. Numerous bilateral agreements also dealt with specificities of the sector. In the GNS negotiations, the relevance of exceptions linked to cultural policy objectives had been recognized in the Montreal text. The treatment of audiovisual services should be two-fold. First, the provisions of the framework should apply to those segments of the sector which could be subject to multilateral liberalization without impinging on key objectives of a country's cultural policy. Second, annotations might be necessary for those segments of the sector which embodied some of these objectives in order to adapt the application of framework provisions to their specificities. Flexibility in the application of framework provisions might also be in order regarding technological developments in the sector.

11. Following the general remarks, the Chairman introduced the discussion on the concept of m.f.n./non-discrimination.

12. The representative of the European Communities said that the working definition for this group should include production, distribution and diffusion of audiovisual works. The granting of concessions on an m.f.n. basis was difficult to conceive in the context of regional communities and/or arrangements. The representative of Canada saw difficulties also with respect to elements of co-production agreements which were often limited in their application to the parties concerned (e.g. fiscal measures, investment provisions).

13. The representative of the United States requested clarification from the representative of the European Communities on the compatibility of article 6 of the EC directive regarding the granting of preferences to producers of non-member-states with the m.f.n. principle. She also asked for a precise definition of the term "cultural communities". The representative of Australia warned against too much emphasis being placed on, and too much time being devoted to, questions relating to the definition of audiovisual services trade. He was attracted by the suggestion of the representative of the European Communities that production, distribution and diffusion should be covered by the working group. He also agreed that some flexibility was needed for this sector so as to avoid stifling of technological developments which might be of great significance to the sector. Specificities relating to co-production agreements did indeed exist but might not warrant treatment in an annex or annotations. It was already common practice for bilateral co-production arrangements to provide for preferential treatment between signatories.

14. The representative of the European Communities clarified that the application of the m.f.n. principle should be extended to those audiovisual services which did not embody policy objectives of a country's cultural policy. Conversely, the application of the principle might not be feasible in the case of services which reflected policy objectives of a cultural nature. The representative of the United States noted that the representative of the European Communities seemed to be suggesting that liberalization commitments would not affect audiovisual services which embodied policy objectives of a cultural nature. In that context, the issue of definition and scope in audiovisual services trade needed a more profound consideration.

15. The representative of Switzerland, though not opposing the contention that national sensitivities should be respected, could also accept the merits of an increased access to foreign audiovisual works. For small countries, an important element in the industry had been the granting of financial assistance to national providers as a means of supporting their access to and stability in, national and international markets. The Group should also devote some attention to the role of co-production agreements in providing access to export markets for audiovisual services providers of small countries.

16. The representative of Canada said that it should be recognized that some countries had certain common interests in providing some degree of protection for their culture at various levels (e.g. national, communal). Furthermore, the film industry constituted a services industry in its entirety. Films embodied an increasing number of services as the carriage element became less and less significant in the case of both video-tapes and TV broadcasting.

17. The representative of India said that the debate on whether or not sectoral annotations would be necessary for the audiovisual services sector was inextricably linked to the debate on the coverage of the agreement. If the GNS were to decide that the coverage of the agreement should be universal in character through an illustrative list, for example, the debate

in this working group could have a very different character. His delegation had no definitive position on whether annotations were necessary for the audiovisual sector. If annotations were deemed necessary by the group, it was important to define the scope of activities to be covered by such annotations. He agreed with others that it would be useful for the Group to distinguish between the carriage and the content functions common to certain audiovisual services. The Group should first concentrate on whether annotations were or not necessary to reflect the specificities of the audiovisual services sector. The position of his delegation continued to be that derogations from the application of the principle of m.f.n. should not exist for any sector unless they were well justified. There was no basis for the introduction of cultural concerns into the consideration of co-production agreements since such agreements performed a function which was primarily economic in nature.

18. The representative of Sweden, on behalf of the Nordic Countries, was not convinced that production-related activities should be considered as trade in audiovisual services. If so, a clarification of the application of subsidies to audiovisual services trade might be in order. Subsidizing for cultural purposes, if it were to be permitted through annotations on the sector, should not necessarily conflict with the application of the m.f.n. provision under the framework.

19. The representative of Switzerland said that even though the film industry was essentially a services industry, there were elements of it which involved goods trade in its traditional sense. Barriers to the movement of film reels, for example, were relevant for the consideration of the Group and should be ultimately eliminated as a means of increasing market access for foreign providers of audiovisual services. Due attention should be devoted to the distinction between the carriage and content functions performed in the audiovisual industry. Adequate coordination was advisable between the work of this group and that of the ITU in that respect. The representative of the European Communities pointed out that transmission by satellite increasingly replaced the use of magnetic bands as a carrier of audiovisual works.

20. The Chairman then opened the discussion on the concept of transparency.

21. The representatives of Canada, the European Communities and Australia did not foresee any problems in the application of the concept to the audiovisual services sector.

22. The Chairman turned to the concept of increasing participation of developing countries.

23. The representative of India said that the treatment of this issue in MTN.GNS/35 was inadequate given the agreement reached at Montreal. Elements of relevance in this sector related to the transfer of technology, training of personnel and access to distribution channels and information networks. He said that in accordance with MTN.GNS/35 the granting of market access and national treatment would be circumscribed by certain conditions and qualifications which would result from negotiations. The underlying question

regarding co-production for developing countries was how agreements of that nature could work to inhibit or promote their participation in world audiovisual services trade. The representative of Egypt said that many aspects of relevance to developing countries appeared in article 8 of MTN.GNS/W/101. He suggested that it would be useful to have some elucidation on the relationship between the work of this group and related provisions in the GATT.

24. The representative of the European Communities said that article V of MTN.GNS/35 on the increasing participation of developing countries seemed adequate as drafted - i.e. without obligations of a very specific nature. Other provisions, e.g. articles VI (economic integration) and XX (schedules) contained significant provisions in favour of developing countries. She said that for economic development to be balanced it should occur in tandem with cultural development. In that sense audio-visual services played a key role in developing countries. The representative of Canada said that his delegation's preference was for development-related concerns to be reflected in the level of commitment of each individual developing country through flexible phasing-in periods.

25. As there was no discussion on the concept of domestic regulation, the Chairman opened the discussion on the concept of safeguards and exceptions.

26. The representatives of the European Communities and India said that there were no specificities regarding the application of safeguards to the sector which warranted treatment in sectoral annotations. The views of the European Communities regarding exceptions were reflected in some measure in article XIV of MTN.GNS/35 on exceptions. The representative of India did not see the need for a special exception regarding audiovisual services. The representative of the United States reiterated her delegation's strong opposition to a general exception for cultural values.

27. The representative of Canada expressed the view that a general exception for cultural identity and values was needed. Such exception should also ensure that governments had the flexibility required to deal with changing technologies and the high degree of innovation affecting the sector. He was confident that it was possible to define an exception in a manner that would limit abusive practices. The representative of Australia said that a sweeping exception could create a large loophole in the services framework. The effectiveness of the framework hinged on greater and not lesser predictability in services trade relations. He asked for clarification on the part of the representative of the United States regarding this country's foreign ownership restrictions which were based on national security. The representative of the United States said such restrictions were governed by regulations which dated from the time of the Second World War.

28. The representative of Sweden, on behalf of the Nordic Countries, said her delegation had no definitive view on the need for an exception based on cultural identity and values. While there might be some merit to such an exception, her delegation reserved its position in the absence of written

proposals from interested delegations. This view was shared by the representative of Switzerland.

29. The representative of Egypt said that a general exception for cultural identity and values was essential for his delegation. In considering this sector, delegations should consider not only economic but also social and cultural aspects.

30. The representative of the United States stressed that it was difficult to define a cultural industry as the content and market appeal of audiovisual products were increasingly international. The representative of Canada said that each individual country should be the best judge of its own cultural policy. He pointed out that an exception for cultural industries had been included in the Free Trade Agreement (FTA) between the United States and Canada and should be possible also in the context of the framework resulting from the GNS negotiations. The representative of the United States said that though cultural industries were not covered by the FTA, her country had reserved the right to retaliate against restrictions in this area.

31. The Chairman invited comments relating to the concept of market access.

32. The representative of Australia said that most restrictions relating to the production side of the audiovisual industry were indirect in nature, involving the temporary movement of personnel. On the distribution side, restrictions appeared in the form of foreign investment requirements. On the diffusion side, few countries restricted ownership of cinemas by foreign nationals beyond general foreign investment measures but most countries had restrictions on the ownership of national broadcasting enterprises for national security and/or cultural identity reasons.

33. The representative of Canada said that barriers or measures impacting on trade in audiovisual services included government monopolies in the area of broadcasting, screen-quotas for films, local content requirements and subsidies. Restrictive measures were widespread and gave support to his delegation's position in favour of exceptions for cultural values which allowed governments a certain degree of flexibility in policy-making.

34. The representative of India saw no need for elaboration in a sectoral annex. The approach reflected in the draft framework text (MTN.GNS/35) with respect to market access and national treatment suggested that commitments would be made on a long-term basis through a positive listing of bindings.

35. The representative of the European Communities said that the scope of application of the concept of market access would depend on the types of services and transactions each party would choose to commit to the liberalization process under the framework. In some areas of the audiovisual services sector the granting of market access could be made conditional on respecting certain measures of a domestic nature. The granting of market access should only be feasible for those segments of the sector which did not fall under, or embody, national cultural policy objectives. Her delegation was seeking some adaptation, if not a derogation, in the

application of market access to those segments which did embody such objectives. In clarifying a point raised by the representative of Canada, she said that her delegation saw the need for special treatment regarding portions of the audiovisual sector which fell under national cultural policies and not an overall exception applying to cultural industries broadly defined.

36. Regarding the concept of national treatment, the representative of the European Communities said that her delegation was seeking, through a sectoral annotation, the means with which to limit its application so as to preserve national cultural values embodied in audiovisual works. The origin of such works was in that respect an important determining factor.

37. Concerning the concept of progressive liberalization the representative of the European Communities said a certain degree of flexibility should be retained in the liberalization process in order for cultural values to be protected through measures embodying national policy objectives of a cultural nature.

38. The Chairman closed the discussion on concepts. In response to a number of requests for relevant information and analysis by the secretariat, the Chairman noted that the secretariat was willing, in preparation for the next meeting, to undertake an historical analysis of the drafting of GATT article IV, a preliminary examination of the key trade concepts under discussion as they related to this sector, and an overview of existing international arrangements in the audiovisual sector. He considered that the first meeting had outlined four basic approaches to this sector: first, full application of the framework to the sector; second, reservations; third, sectoral annotations or annexes; and fourth, a general exception based on cultural values. Some delegations had, however, stressed the difficulties in defining terms such as "cultural values" or "cultural identity". Regarding the definition of what was included in the sector, some delegations considered that the production aspect should be covered and some had made a clear distinction between the carriage and content functions in the communications sector. Regarding the future work of the group, he suggested that further discussion of concepts was necessary and in particular of the following: m.f.n., national treatment, market access, government aid, and the increasing participation of developing countries. Finally, he welcomed written proposals for a possible annotation or annex from delegations for the next meeting which was scheduled for 5 and 6 October 1990.