

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Services

WORKING GROUP ON AUDIOVISUAL SERVICES

Note on the Meeting of 5 and 18 October 1990

1. The Chairman welcomed delegations to the second meeting of the working group on audiovisual services and drew their attention to the decision of the GNS regarding further work on sectoral annotations/annexes. He said that he intended to conduct the meeting following the guidelines contained in that decision, namely to examine whether an annex was necessary for the audiovisual services sector and, if so, to identify the issues/provisions which would warrant specific annotations. He then opened the floor for the presentation and discussion of submissions.
2. In introducing the E.C. submission in MTN.GNS/AUD/W/2, the representative of the European Communities said that the objectives of this draft annex were to ensure that the liberalization of audiovisual services through the framework be achieved while respecting the cultural specificities of these services. It defined audiovisual services to include any activity related to the production, distribution and broadcasting of audiovisual works whatever the means used. Annotations on the principles of m.f.n., national treatment and market access were proposed based on the cultural content of audiovisual works and on the right of parties to introduce measures applying to audiovisual services for cultural reasons.
3. The representative of Australia supported the objectives embodied in the draft annex proposed by the European Communities. The representatives of Sweden, on behalf of the Nordic countries, Canada, India, Chile and Cuba also supported, though to varying degrees, the approach adopted in the communication. The representative of Sweden placed emphasis on the need to respect the cultural policies of areas within a country or a region which had distinct linguistic specificities. The representative of India warned against measures for the promotion of cultural and linguistic diversities being applied as disguised restrictions to trade in the sector. He also did not see the need for annotations on market access and national treatment which constituted negotiated commitments under the framework. His delegation would prefer to address cultural specificities of this sector and others through a general cultural exception in the framework. This was also the position taken by the representative of Canada.
4. The representatives of the United States and Japan warned against the approach embodied in the draft annex arguing that it would amount to a wholesale exception of the audiovisual services sector from the coverage of

the framework agreement. Both representatives were not convinced that the specificities of this sector, particularly those relating to its cultural aspects, warranted any elaboration in an annex or annotation.

5. The representative of Australia said that, in his view, MTN.GNS/AUD/W/2 constituted a fair starting point given the differing positions of participants with respect to audiovisual services and cultural matters. He stressed that the motivation underlying the positions taken by several participants was to ensure that their countries' populations had access to their own national products. In Australia, the market for audiovisual services was already relatively open and Australians had wide access to foreign audiovisual works. Ninety percent of films on Australian screens in 1980 were of foreign origin, distributed mostly by American firms. The intention of his government was to legitimize the cultural objectives of certain national policies applying to the sector and not to institute disguised barriers to trade in audiovisual services.

6. The representative of the United States stressed that her country's film industry believed in healthy local audiovisual industries but objected to measures which under the guise of promoting cultural objectives in effect protected inefficient and low-quality local production. She suggested that liberalization in the sector did not necessarily imply lessened domestic production. Also, greater attention should be devoted to the potential earnings deriving from the exhibition of foreign audiovisual works. She reiterated that the United States believed that audiovisual services were a vital element of global trade in services and that the framework agreement should fully apply to this sector, with very limited exceptions. She strongly opposed a cultural exception, regardless of whether that exception was part of the overall framework agreement or was confined only to audiovisual services. To argue that trade in audiovisual products should be restricted in order to protect cultural values implied that consumers can be coerced to viewing only films which embody national culture (and this assumes an adequate definition for "national" and "culture"). But, in fact, consumers could be forced to watch particular films or listen to particular sound recordings. Restrictions on market access for audiovisual products would not boost a local culture. Consumers should have the freedom to choose what they viewed and what they listened to, within certain moral constraints. The marketplace decided what films, for example, were popular, and what films did not draw an audience. Films lacking those characteristics which attracted a large audience would not draw viewers simply because access to popular films was restricted. The same was true for sound recordings.

7. The representatives of Egypt, Brazil and Finland stressed the need for flexibility in dealing with the specificities of the audiovisual services sector. The representative of Brazil suggested that an annotation on the application of m.f.n. to the sector would be necessary.

8. The representative of New Zealand found that the draft annex in MTN.GNS/AUD/W/2 was too broad and sweeping in its approach. However, she could see the value of further discussions on the issue, flagged under the draft annex, of rules of origin as applied to services trade.

9. The representative of the European Communities, in response to the various comments that had been made, noted that her delegation's proposed annex contributed to and qualified the implementation of the general principle of liberalization of all services - including audiovisual services - contained in the Agreement; recognized the right of parties to apply and develop policies pursuing cultural objectives; and applied only to audiovisual services having a cultural content. The field of application was determined by reference to the types of activity in the audiovisual sector (production, distribution and broadcasting). This definition covered both different media (e.g. radio, television, cinema, video and disc) and different technical means of transmission (e.g. cable, air, satellite). It excluded all forms of provision of technical services. Regarding most-favoured-nation treatment, she said that the application of this principle had to be adapted to take into account the nature of the services concerned. This implied that any type of audiovisual service which did not contain a cultural component (e.g. advertising or the transmission of a news channel) of whatever origin, would benefit from the application of m.f.n. It also implied, as regards audiovisual services with a cultural component, that the benefit of the m.f.n. principle could not be granted unconditionally. Parties to the Agreement would remain free to define and structure their cultural environment according to their policy objectives.

10. Following informal consultations, on the need for and possible contents of an annex for audiovisual services, the Chairman announced his intention of presenting a report in accordance with the mandate laid down by the GNS. In summarising the discussions that had taken place, he noted that there seemed to be no convergence of views on how to treat the specificities of trade in audiovisual services although they were widely recognized. Broadly speaking, three approaches could be discerned: first, some delegations favoured a general exception in the framework agreement based on cultural values or relating to cultural services in order to preserve and promote national cultural policy objectives; second, other delegations, who considered that such a general exception would be too broad in scope, were of the view that the sectoral specificities and the need to preserve and promote cultural objectives were better dealt with through an annex limited to audiovisual services; among delegations who preferred the general exception approach there were some who were prepared to look at the need for a specific annex; third, only few delegations considered that the specificities of the sector did not warrant either the inclusion in the framework of a general exception based on cultural values or any elaboration in an annex on audiovisual services. These delegations held the view that possible derogation needs should be taken into account in commitments in national schedules. Regarding the possible content of an annotation/annex, he said that among the delegations which favoured or were prepared to consider an annex, there were differences of views with respect to what an annex should cover: (a) any activity related to the production, distribution and broadcasting of audiovisual works whatever the means used; (b) cultural services which includes audiovisual services; (c) all existing and future cultural industries, i.e. audiovisual services, broadcasting, publishing and sound recording. Finally, among the delegations which favoured or were prepared to consider an annex, there

were differences of view as to which framework provisions - general obligations contained in Part II or also specific commitments contained in Part III of the draft framework - required annotation and as to the possible scope and content of such annotations. However, it was recognized that the nature and content of an annex might need to be examined in the light of further developments in the existing draft framework.