

**COMMUNICATION FROM BRAZIL**

Audiovisual Services

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

1. Brazil submits this proposal for consideration by Members<sup>1</sup>. Its purpose is threefold: (a) to promote the progressive liberalization of this important sector while ensuring at the same time governments' autonomy to preserve and promote cultural identity and cultural diversity; (b) to contribute to the discussions on the best ways to achieve this goal, including through the consideration of subsidization schemes and trade defense mechanisms; and (c) to contribute to increasing the participation of developing countries in trade in services. Article IV of the General Agreement on Trade in Services ("Increasing Participation of Developing Countries") states clearly in paragraph 1:

"1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and

(c) the liberalization of market access in sectors and modes of supply of export interest to them."

2. Also, the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), adopted on 28 March 2001, state that:

- (...) the negotiations (...) shall aim to increase the participation of developing countries in trade in services.
- (...) There shall be no *a priori* exclusion of any service sector or mode of supply. Special attention shall be given to sectors and modes of supply of export interest to developing countries.

---

<sup>1</sup> This proposal is not a legal text. It is submitted solely for the purpose of negotiation and does not prejudice the position of (...) Brazil regarding the issues raised in it. Brazil reserves its right to modify or complement the contents of this proposal at a later stage.

## I. INTRODUCTION

3. Audiovisual services constitute a dynamic sector in modern market economies. It covers a wide range of activities related basically to the production, distribution and exhibition of audiovisual contents. International trade in audiovisual services has experienced significant growth in the last years, a tendency that is further intensified by the consequences of the IT revolution and the so-called technological convergence.

4. In the Services Sectoral Classification List (MTN.GNS/W/120) drawn up during the Uruguay Round and based largely on the United Nations Central Product Classification, the definition of the audiovisual sector comprises six sub-categories as follows:<sup>2</sup>

### 2.D. AUDIOVISUAL SERVICES

a.	Motion picture and video tape production and distribution services	CPC 9611
b.	Motion picture projection services	CPC 9612
c.	Radio and television services	CPC 9613
d.	Radio and television transmission services	CPC 7524
e.	Sound recording	n.a.
f.	Other	

## II. TREATMENT OF THE SECTOR IN THE WTO

5. The discussion on the liberalization of the audiovisual sector under the GATS was characterized in the Uruguay Round by two radically conflicting positions. One view argued that the sector should be completely excluded from trade rules on the grounds that audiovisual services could not be considered as just another commercial service given their role in the promotion and preservation cultural identity and cultural diversity. The opposing view rejected any specific characterization of the sector in relation to other products and economic activities subjected to the disciplines of the multilateral trading system emphasizing that the purely entertainment and commercial nature of audiovisual products and services.

6. It would seem, in our view, that both positions miss the point. On the one hand, the “cultural exception” argument, apart from lacking any basis in the disciplines of the GATS, does not seem to take into account the fact that cultural products and services are part of an industry of clear economic and commercial importance, the audiovisual sector being its most dynamic segment and one of export interest to some developing countries. On the other hand, it cannot be denied that audiovisual services play a relevant role in the transmission and diffusion of cultural values and ideas, which is a paramount national policy objective for many countries. These political sensitivities are reflected in the extensive regulation of the sector in a large number of countries and in the low level of commitments made by WTO Members. Indeed, only 22 out of the 141 Members have made commitments and even so those are mostly partial bindings.

---

<sup>2</sup> The first four activities are further disaggregated at the five-digit level in the UN CPC. For example, motion picture and video tape production services is referred in CPC 96112, whereas distribution is CPC 96113. Radio services is CPC 96131 and television services is CPC 96132.

7. The question that should be considered is, rather, how to promote the progressive liberalization of the sector in a way that creates opportunities of effective market access for exports of developing countries in this sector without affecting the margin of flexibility of governments to achieve their cultural policy objectives as they find appropriate. It is perhaps important at the same time to point out that the consideration of any "special treatment" for the audiovisual sector must take into account possible systemic implications of such treatment vis-à-vis other areas of the WTO.

8. The GATS would seem to provide appropriate tools for achieving liberalization without losing the autonomy to regulate in order to promote cultural policy objectives. Besides recognizing Members' right, particularly developing countries, to regulate and introduce new regulations in order to meet national policy objectives, the GATS allows for MFN exemptions<sup>3</sup> and provides ample flexibility for countries to schedule commitments in view of its bottom-up, positive list approach, and its "negotiable" National Treatment discipline.

9. However, in view of the sensitivities associated with this sector, consideration should be given to additional instruments, particularly in the area of motion picture production and distribution. There is merit in considering mechanisms for subsidies in the audiovisual sector aimed at achieving cultural policy objectives. This could be addressed in the ongoing negotiations on subsidies under Article XV of the GATS in the framework of possible multilateral disciplines or by scheduling National Treatment limitations for those subsidies in Members' schedules of specific commitments. In any event, it would be important to ensure that they have the least trade distortive effect, given the disparities in Members' capacity to subsidize. Special needs of developing countries must be appropriately addressed in this regard.

10. But, besides economic considerations, subsidies might not be sufficient to promote and protect certain types of domestic production in the area of motion picture production and distribution. Here, the global market is generally characterized by an oligopolistic structure, dominated by a few major companies. There is also the question of transfer pricing resulting from marketing in the dominant market. Audiovisual products are often placed at "dumping" levels in foreign markets, since most of the cost of production has already been recouped in the home market of the producing country. This creates a situation of unfair competition with the effect of "crowding out" domestic production both from theatres and other means of delivery (network TV, cable TV, home video, electronic means).

11. This situation would seem to require the development of appropriate trade defense mechanisms (e.g. specific antidumping disciplines) for the audiovisual sector. The development of an emergency safeguard mechanism, as has been discussed in the context of the ongoing negotiations under Article X of the GATS could also play an important role in this regard. Alternatively, or complementarily, competition disciplines could be considered, building on Article IX of the GATS (Business Practices). It is interesting to note in that regard that one WTO Member has listed an MFN exemption for "redressive duties which may be imposed in order to respond to unfair pricing practices, by certain third countries' distributors of audiovisual works."<sup>4</sup> It does not seem that an MFN exemption is the most appropriate way to address these kinds of measures. There is a need to develop an appropriate instrument, which is systemically consistent and available to other Members, irrespective of MFN exemptions.

---

<sup>3</sup> In the current situation, however, the possibility of listing new MFN exemptions by WTO Members is limited to the maritime transport sector.

<sup>4</sup> See document GATS/EL/31.

### III. PROPOSAL

12. (...) Brazil proposes:

- (i) That Members make specific commitments in audiovisual services taking into account the objectives of Article IV of the GATS (Increasing Participation of Developing Countries). In that regard, special attention should be given to audiovisual services in which developing countries have greater potential such as (but not exclusively) television services (CPC 96132).<sup>5</sup>
  - (ii) That the CTS in Special Session initiate a debate on subsidy schemes aimed at achieving national policy objectives of promotion and preservation of cultural identity and cultural diversity (see para. 9 above).
  - (iii) That the CTS in Special Session initiate a debate on trade defense and/or competition provisions (see paras 10 and 11 above) necessary to address unfair trade practices and/or restrictive business practices in the sector.
- 

---

<sup>5</sup> CPC 96132 defines Television services as “production of television programmes whether live or on tape or other recording medium for subsequent broadcast.”