

URUGUAY ROUND

OF MULTILATERAL TRADE NEGOTIATIONS

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PETER SUTHERLAND RESPONDS TO DEBATE ON AUDIOVISUAL SECTOR

Following a variety of public statements in Europe on the possible implications of the Uruguay Round General Agreement on Trade in Services for the audio-visual sector, Peter Sutherland, GATT's Director General, today issued the following statement.

"The debate in Europe on the potential effects of the Uruguay Round on the audio-visual sector - films, TV and radio broadcasting, sound and video recording etc - has proceeded recently on the basis of some serious misunderstandings.

"The big question is, does anything in the Uruguay Round require that the European market be opened up to such an extent that European - and particularly, non-English language - film-making will be destroyed? The answer has to be a resounding "no". There are two or three essential points. First, nothing in the services agreement envisages the deregulation - let alone total deregulation - of any services sector. It has always been recognised that services are special and that governments will often regulate them for good reasons. Can anyone imagine, for instance, that a GATT agreement could rule out national prudential controls in the insurance industry? The reality is that access to the audio-visual market - like any other of their services markets - is something that Uruguay Round participants can offer or not, and several have done so. Clearly, those trading partners with an interest in the market will do their best to negotiate an opening.

"The second point to stress is that there is nothing in the agreement which will prevent governments from funding audio-visual projects. Obviously, much indigenous film-making is dependent on government support and that can continue.

"Finally, I could draw attention to several other provisions of the agreement which recognise the special situation of services. Because of this recognition and because of the agreed mechanics of making national commitments in the market access area, it has long been accepted by participants that there is neither need nor value in excluding any sector from the agreement. A general cultural exception has been considered in the negotiations and rejected.

"Nor should it be forgotten that the industry has much to gain in other parts of the Uruguay Round package. Notably, the agreement on intellectual property will give global copyright protection, for the first time, to film-makers, musicians, indeed creative people of all kinds. This is a major advance in the fight against copyright piracy.

"In short, while the European Community may not yet have reached the end of the road in its direct negotiations with the United States on the audio-visual sector, the Uruguay Round agreement itself is simply not a valid target of criticism. I very much hope for a more realistic debate on the problems and opportunities in the sector."

A general background brief on this issue is attached.

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BACKGROUND NOTE ON THE AUDIOVISUAL SECTOR

A. The Audiovisual Sector in the Uruguay Round

1. The GATT and the General Agreement on Trade in Services (GATS) allow members a great deal of flexibility

1. As of 1947, under **Article IV** the GATT authorized the imposition of national screen quotas for films (television did not exist at the time). Many countries have made use of this possibility.

Article IV does provide for the liberalization or elimination of these screen quotas by means of negotiation, but there is no obligation to do so.

2. **The Framework Agreement on Trade in Services (GATS)** will for the first time establish multilateral rules for trade in all service sectors. It will also include specific commitments which governments are prepared to undertake in order to improve or bind market access. It will also provide a framework for future negotiations.

- * All the governments of participating countries have agreed not to exclude any sector from the negotiations. They have also accepted that the fundamental principles of non-discrimination and transparency of trade barriers should apply to all sectors, including the audiovisual sector.

This does not mean that all governments will have to open their market in all sectors. It is up to each government to decide which sector or sub-sector will be open to foreign competition. Even in the sectors where it has granted access to its market, a country may:

- (a) restrict the application of **national treatment**. This means that a government, with the consent of its partners in the negotiations, will be able to keep elements of preference for its own service suppliers. Thus, for example, there is no obligation for the European Community to eliminate the protection of European works provided by the "Television without Frontiers" Directive;
 - (b) request exemptions from **most-favoured-nation treatment**; thus, for example, certain preferences established by the above mentioned Directive for cultural products of the other European countries would be compatible with the GATS.
- * The GATS does not contain any provisions on the **financing** of the audiovisual sector. Consequently it does not affect the continuation of existing systems of financing. Article

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XV merely notes that in certain circumstances subsidies may have distortive effects on trade in services, and encourages member countries to enter into negotiations subsequently in order to develop disciplines. These negotiations will require the consensus of all participating countries.

The European "Media" programme of support for the motion-picture and audiovisual sector established for 1991-95 and the other European programmes developed by the Community would therefore not be affected. As for the current French system of support, it is largely self-financed by members of the audiovisual sector out of their own earnings, and public subsidies are small.

- * The Framework Agreement does **not** provide for the **deregulation of audiovisual services** or of any other sector. No government has ever proposed or even considered such a possibility. The GATS recognizes that all service industries will continue to be subject to domestic regulations. Members will only have the fundamental obligation of ensuring that the regulations are "administered in a reasonable, objective and impartial manner".
- * Lastly, the GATS Framework Agreement provides for a **series of exceptions**, similar to those of the GATT, authorizing restrictions to protect the balance of payments, public morals, public safety and privacy, or to allow the application of laws or regulations which are not inconsistent with the GATS, as well as a **safeguard clause** allowing governments provisionally to restore some protection for domestic producers.

II. The outright exclusion of audiovisual services has been discussed and rejected

- * At the Montreal Ministerial Meeting in December 1988, the Uruguay Round participants reaffirmed their intention of not excluding any sector from the coverage of the GATS.
- * During the negotiations leading up to the Brussels Ministerial Meeting which was supposed to close the Uruguay Round in December 1990, a number of countries requested a cultural exception so as to exclude the audiovisual sector from an agreement on services. The Community considered that a cultural exception would go too far and allow abuses, and proposed that the unique character of the audiovisual sector be preserved by means of a "cultural specificity clause" which would allow special treatment for the sector, rather than exempting it from the rules of international trade.

All countries subsequently rallied to the draft framework agreement and dropped their requests for an exception; clearly the solutions proposed or allowed met the concerns raised.

So far the Community has not given any precise content to this notion of cultural specificity; Sir Leon Brittan has announced that this will be done very shortly.

- * Several countries have submitted liberalization offers concerning motion pictures, the production and distribution of video cassettes, cinematographic production services, radio and TV broadcasting services and the phonogram recording and distribution.

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III. The audiovisual industry will derive major advantages from the Agreement on Intellectual Property Rights (TRIPS)

The TRIPS Agreement that will result from the Uruguay Round affords the motion-picture industry and the authors and performers of artistic works much better protection of their rights, and consequently of the legitimate benefits they can derive from their activity, than existed hitherto.

- It extends the protection afforded by the Berne Convention for the Protection of Literary and Artistic Works, by obliging some fifty countries which did not have to do so to apply the standards of the latest version of the Convention.
- It provides for a number of additions to or clarifications of the standards contained in the Convention in a manner favourable to the movie industry.
- It grants major advantages to the sound recording industry, in the form of exclusive rental rights and a fifty-year term of protection.
- It establishes the first set of truly international standards on the protection of the rights of performers.
- And above all, it obliges for the first time governments of all countries to provide effective means of combatting piracy, which is so widespread in this sector.

Lastly, for the first time in the intellectual property area a dispute settlement system will be established to which countries will be able to resort if another country fails to respect its obligations. This system will make it possible to address tensions on the basis of fair and objective rules rather than by unilateral decisions.

B. Economic Background

I The world audiovisual market

1. After a period of strong growth the world market is flat

According to the World Communications Systems Observatory, the world audiovisual market, which includes audiovisual services and equipment, amounted to 289.4 billion dollars in 1992, or 1.2% of world GDP.

Growth of the sector slowed to 4.4% in the same year (compared with an average of 6.5% from 1985 to 1990); this trend should become more marked in 1993 and next year.

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2. Audiovisual services represent 54% of the audiovisual market and are growing more slowly

Audiovisual services totalled some 156 billion dollars in 1992, broken down as follows:

- TV broadcasting	99 billion (63.5 %)
- video	30.8 billion (20 %)
- cinema	13.4 billion (8.5 %)
- radio	12.5 billion (8 %)

Growth of audiovisual services has been slower than that of equipment owing to the decline in advertising revenue of broadcasters since 1990, but cable is growing from a currently low level. The decline in cinema attendance has been widespread for the last thirty years. It has been less noticeable in the United States but particularly strong in Western Europe (attendance levels five times lower in 1990 than in 1960) and in Japan (eight times lower). Over a shorter period, from 1980 to 1985, only the United States managed to keep up audience numbers, whereas cinema attendance in Western Europe dropped by 34 %.

II. The audiovisual market is already largely international

Foreign direct investment in the US audiovisual sector, amounted to 2.560 billion dollars in 1989, while US investment abroad was \$1,136 billion. The US industry has progressively come under foreign control, largely that of Japanese consumer electronics groups. European (Belgian, Dutch, English, French and German) banks have invested in US film production since the mid-1980s.

Moreover international co-productions of films and television series, especially Euro-American ones, have become commonplace since the mid-1980s. The tax breaks offered by European countries for audiovisual productions are playing an increasing rôle in the choice of co-productions. Meanwhile some European enterprises, such as Canal Plus, have set up production subsidiaries in the United States to be able to participate directly in projects on the largest scale.

It is also the case that European actors, actresses, directors, script-writers, producers and many other creative people are commonly working in the international audio-visual industry and especially in the US industry.

In order to compete with private channels, European public television services are now banking on technological innovation (high definition television, digital radio) and the launching of channels aimed at an international audience (such as Arte and the BBC TV World Service). The growing success of Sky News in Great Britain and CNN worldwide has led the public services to diversify: hence the Euronews project developed by the European Broadcasting Union. The BBC and Deutsche Welle are also considering launching international news channels.

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III. So the European audio-visual deficit with the United States is not the whole story

Although statistics on their activities are often lacking, it should be stressed that many countries have an intense interest in the audio-visual sector and the GATS negotiation. However, the debate has recently focused on trade between the US and the EC.

1. The deficit did not increase in 1992

According to the calculations of the IDATE European Research Institute, in 1990-1991 US audiovisual revenue earned in Europe amounted to 3,782 million dollars whereas European income on the US market amounted to 247 million dollars.

The breakdown of these 1991 revenues is as follows (in millions of dollars)

	USA	EEC
Cinema	1,197	50
Television	1,278	94
Video	1,307	103

This deficit shrank slightly in 1992 when US revenue amounted to 3.6 billion and European revenue to 288 million.

2. Nor does it reflect the respective sizes of the American and European audiovisual industries

According to the figures cited by the French Minister of Culture, Jacques Toubon, in 1991 European audiovisual firms had a turnover of 33.15 billion ECUs, or a quarter of the US audiovisual total. Forty-five European companies are included in the list of the world's top one hundred audiovisual enterprises.

The American motion-picture and television industry represents about 40 per cent of the world market. It is the country's second export industry after aircraft, but seems to be losing steam after a period of annual growth of 8.1 per cent from 1985 to 1990. Only cable and video are maintaining rapid growth in this sector.

As for France, its audiovisual turnover from broadcasting amounted to 45 billion francs in 1991.

IV. While US producers' sales to European and French TV stations have risen sharply ...

From 1984-85 to 1990-91, the sales of independent US producers to European television channels went up from 39 to 277 million dollars. This growth was strongest in France where the market barely existed in 1984-85 and sales reached \$91 million in 1990-91. The deregulation of the

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television industry in Europe has certainly played a part in these developments, as has the proliferation of new television channels in France.

In contrast, the income of these same producers on the French film market rose by only 25%, while on the video market they fell by 70%.

The Community Directive on "Television without Frontiers" entered into force in October 1991. It provides that "Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services". This Directive has been implemented with a varying degree of strictness from country to country. In France, 60% of programmes shown on television must be European (40% French).

However, the development of new technologies that enable viewers to receive foreign programmes directly by satellite or cable raises questions about the effectiveness of regulating the sector by means of broadcasting quotas.

... the penetration rate of the French motion-picture market is the lowest in Europe

According to IDATE, the percentage of sales of American films on the European market rose from an average of 60.2 per cent in 1984 to 71.5 per cent in 1991. The penetration rate in France remained the lowest of all EEC countries, including the Mediterranean countries, rising from 36.8 to 58.7 per cent.

The highest penetration rates are in the United Kingdom and Ireland (over 90 per cent), followed by Greece (88 per cent), Portugal (85 per cent), and the Netherlands (83%). In Spain, the rate is 75%.

V. The Development of New Global Markets

The two most developed audiovisual markets - the United States and Western Europe - are currently realising a slow-down in growth. However, other regions in the world have important development potential in the audiovisual area.

In their transitions to becoming democracies with market economies, countries in Central and Eastern Europe are expected to undergo rapid evolutions in their audiovisual sectors. Private television stations, paid TV, and cable television should offer interesting opportunities.

There are also strong possibilities in Asia, where numerous private stations are going on the air. Hong Kong, Singapore, Thailand and India all serve as examples. In regard to Japanese television, the number of stations beamed by satellite (by the NHK public network and the privately run JSB) has led to an increase in the number of programmes which is now much higher than that offered nationally.

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Latin America is de-regulating its television sector, in the light of increased competition from private channels. Restrictions on market access are being progressively lifted in many countries. As a result of the agreements concluded in Caracas in 1991, the television market in Latin America is expected to create a vast audiovisual market.

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