



GATS and the audiovisual sector

An update

■ **Des Freedman**

Goldsmiths College, University of London, UK

One of the major achievements of the Uruguay Round of trade talks that concluded in 1994 was the establishment of the General Agreement on Trade in Services (GATS) to be administered by the newly-formed World Trade Organization (WTO). The objective of GATS is to ensure that key parts of the service sector, which now accounts for the majority of world trade, are progressively liberalized and privatized. Trade disciplines that were traditionally applied to goods – measures that made it harder to justify domestic subsidies and tariffs – are now to be applied to industries including water, health, education and communications.

The audiovisual industries had been left out of the Uruguay Round mainly due to French insistence on a cultural exemption. The new round of GATS talks was therefore an opportunity for governments with liberalizing instincts to try once again to secure 'open markets' in the audiovisual sector. As the industry magazine *TV International* (1999) put it, 'U.S. trade negotiators and Hollywood industry officials are determined to get film, TV program and music exemptions on the negotiating table' (p. 1). Opponents of liberalization were quick to argue that GATS, as one commentator put it, was nothing more than 'legalised piracy' (Petley, 2003: 4), forcing weaker economies to open up their service industries to wealthier countries without reciprocal benefits. In the audiovisual sector, a full implementation of GATS could, in theory, lead to the scrapping of mechanisms like licence fees, screen quotas, press subsidies and public service content obligations that have traditionally been applied to ensure cultural diversity, media pluralism and national sovereignty.

Negotiations started in January 2000 with a timetable agreed at the Doha ministerial meeting in November 2001. Member states would make initial requests for commitments on market access by 30 June 2002 with initial offers, i.e. the response to the requests, tabled by the end of March

2003. Months of hard bargaining and trade-offs would follow with the talks, it was hoped, concluded by January 2005.

Progress in the audiovisual sphere has been slow. Only two countries out of the 147 WTO member states made preliminary commitments in all subcategories of the audiovisual sector: the USA and the Central African Republic. This was followed by the tabling of only three negotiating papers on the topic: two liberalizing ones (from the USA and Brazil) and one more 'defensive' one from Switzerland calling for a 'cultural diversity safeguard'. The American position paper is interesting in that it rejects an 'all or nothing' approach to audiovisual negotiations – full liberalization or a blanket exemption – and acknowledges the validity of using subsidies to pursue specific cultural objectives. Firstly, this is a little ironic given its confrontation with France over screen quotas which nearly derailed the entire Uruguay Round of talks; secondly, given that the paper goes on to argue that the best way to protect cultural diversity is precisely through further liberalization, there is little indication that US negotiators will give up their attempts to undermine the idea of a 'cultural exemption'.

A major criticism of the GATS negotiations has concerned the secrecy and lack of transparency of the process (again, ironic considering that transparency in world trade is one of the prime objectives of the Agreement). Details of *requests* made by member states were not publicized, although some requests were eventually leaked to the public. According to the World Development Movement (WDM, 2003a), the European Union tabled requests to 109 countries, 94 of which are developing countries or 'economies in transition'. While the EU identified telecommunications, water, business and financial services and transport as key targets of liberalization, it did not make any requests in the area of audiovisual. This should not, however, imply that there is a consensus amongst EU member states on the subject of audiovisual liberalization. One British trade negotiator in the Department of Trade and Industry (DTI) argues that the friction, particularly between France and Britain, 'is worse, the divergence of views much larger, than on any of the other subjects we cover' (DTI, 2004).

The USA, on the other hand, is, not surprisingly, more vigorous in its requests for liberalization. It is reported to have requested of the EU 'binding commitments to liberalization ... in areas such as motion picture and home video entertainment, production and distribution services, radio and television production services and sound recording services' (WDM, 2003b). When EC trade commissioner Pascal Lamy refused to budge on not making any commitments in the audiovisual

sector, the assistant US trade representative replied that another audiovisual exemption for the EU is 'not something that we could agree to' (quoted in WDM, 2003b).

Details of the *offers* made by member states are only slightly more accessible. As of September 2004, 42 offers have been made, with the WTO publishing 12 of them on its website (www.wto.org). Officials at the British DTI admit to being disappointed by the low number of offers on the table and describe many of those as being 'thin – in the sense of not offering any new commitments' (DTI, 2004). Although they expect between 10 and 15 more offers before the end of 2004, it is clear that the lack of agreement at the Cancun ministerial meeting in September 2003, where developing countries organized together to challenge what they saw as the Western bias of trade talks, has slowed down the entire GATS process.

Many of the offers make no reference to the audiovisual sector, the exceptions being: Liechtenstein, Norway and Canada, whose offers merely reiterate their support for the idea of a cultural exemption; New Zealand, where liberalization commitments are made in the production, distribution, exhibition and broadcasting of audiovisual works; Japan, where commitments are made in many areas of film and in sound recording services but not broadcasting; and the USA, whose offer allows 'foreign ownership of cable television networks and allows non-U.S. satellite companies to broadcast directly to American viewers' (USTR, 2003). The British trade negotiators describe the offer as 'restrained' in that 'they haven't said, "this is what we've put on the table", but they have hinted at what might be on the table in the future' (DTI, 2004). This confirms that the negotiations are far from complete, particularly in the light of the repeated insistence by US trade officials that instruments like the EU's Television Without Frontiers Directive constitute a significant impediment to free trade in broadcasting.

Indeed, because of the collapse of talks at Cancun and the very slow tabling of offers, the January 2005 deadline has now been set aside for an indefinite end date. British trade officials express the hope that 'it will still be concluded within a reasonable time scale – many of us think that 2006 is achievable and desirable for beneficiary countries both developed and developing' (DTI, 2004).

It remains a fact that, as of now, the worst fears of the anti-liberalization movement have not been realized, at least not in the sphere of audiovisual negotiations under GATS. However, it is likely that audiovisual issues, which have so far been marginal to this GATS Round – partly because of the EU's 'defensive' position and partly because most developing countries with limited audiovisual industries have little to

gain by offering commitments in this area – will start to surface as talks draw to a close. One DTI negotiator describes the audiovisual sector as ‘more of an end-game’ and ‘not as something to sell an offer’ (DTI, 2004). It may well be, therefore, that areas like broadcasting, film and music are reserved as bargaining tools for trade officials when attempting to make deals in other areas like environmental, business and financial services. It could also be that we see a repeat of the arguments between the USA and at least some EU member states over an audiovisual exemption that we saw some 10 years ago during the Uruguay Round.

The lack of movement thus far in the GATS talks does not mean that trade talks are of little consequence to the audiovisual sector. First, as Graham Murdock and Peter Golding put it, ‘whether or not all the proposals currently on the table are incorporated into the revised version of the GATS, the marketised world view that underpins them is already firmly entrenched’ (Murdock and Golding, 2001: 116). We can see this in the most recent policy developments in the USA and UK where the 2003 Review of Broadcast Ownership Rules and the 2003 Communications Act respectively are the latest examples of pro-liberalization initiatives in the sphere of media and communications. Second, while multilateral talks are a slow and tortuous process, bilateral talks present fewer problems. Free trade agreements concluded by the USA in 2004 with Australia and five Central American countries include commitments on the audiovisual and entertainment sectors and, in particular concerning the latter agreement, measures to tackle copyright infringements of US intellectual property. Finally, it is apparent that WTO accession countries are being confronted with demands – mostly led by US trade negotiators – to offer liberalized audiovisual markets as an incentive for joining the club. So while we should watch the conclusion of the GATS talks with interest, we should not turn our attention away from the domestic and bilateral contexts where audiovisual liberalization is very much on the agenda.

Further reading

For commentaries on GATS and the audiovisual sector, consult the websites of the WTO [www.wto.org/english/tratop_e/serv_e/s_negs_e.htm] and the World Development Movement [www.wdm.org.uk/campaign/GATS.htm]. A useful background paper on GATS produced by the British Screen Advisory Council is at [<http://www.bsac.uk.com/reports/gatsbackground.pdf>]. Relevant articles include Freedman (2003) and Graber (2004).

References

- DTI (2004) Interview with Officials from the Trade in Services Unit of the Department of Trade and Industry, 9 September.
- Freedman, D. (2003) 'Cultural Policy-Making in the Free Trade Era: An Evaluation of the Impact of Current World Trade Organization Negotiations on Audio-Visual Industries', *International Journal of Cultural Policy* 9(3): 305–18.
- Graber, Beat C. (2004) 'Audio-Visual Policy: The Stumbling Block of Trade Liberalisation', in D. Geradin and D. Luff (eds) *The WTO and Global Convergence in Telecommunications and Audio-Visual Services*, pp. 165–214. Cambridge: Cambridge University Press.
- Murdock, G. and Golding, P. (2001) 'Digital Possibilities, Market Realities: The Contradictions of Communications Convergence', in L. Panitch and C. Leys (eds) *A World of Contradictions: Socialist Register 2002*, pp. 111–30. London: Merlin Press.
- Petley, J. (2003) 'GATS – Today's Legalised Piracy', *Free Press* 132, January–February.
- TV International* (1999) 'Europe's TV Trade Boom Could Sway WTO Talks as Exports Boom', 7(22), 15 November.
- USTR (2003) 'Free Trade in Services: Opening Dynamic New Markets, Supporting Good Jobs', 31 March, [http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2003/asset_upload_file40_4138.pdf].
- WDM (2003a) 'Whose Development Agenda? A Preliminary Analysis of the 109 EU GATS Requests', 25 February [<http://www.wdm.org.uk/cambriefs/Whose%20development%20agenda%20v-4.pdf>].
- WDM (2003b) 'GATS: From Doha to Cancun', 25 August [<http://www.wdm.org.uk/cambriefs/gats/gatscancunupdate1.htm>].