



**United Nations
Conference
on Trade and
Development**

Distr.
GENERAL

TD/B/COM.1/56
TD/B/COM.1/EM.20/3
4 December 2002

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Trade in Goods and Services, and Commodities
Expert Meeting on Audiovisual Services:
Improving Participation of Developing Countries
Geneva, 13–15 November 2002
Item 3 of the provisional agenda

**REPORT OF THE EXPERT MEETING ON AUDIOVISUAL SERVICES:
IMPROVING PARTICIPATION OF DEVELOPING COUNTRIES**

Held at the Palais des Nations, Geneva
from 13 to 15 November 2002

CONTENTS

<i>Chapter</i>	<i>Page</i>
I. Chairperson's summary	2
II. Organizational matters	11
<i>Annex</i>	
Attendance	14

Chapter I

I. CHAIRPERSON'S SUMMARY

1. The Expert Meeting on Audiovisual Services: Improving Participation of Developing Countries took the view that audiovisual services, because of their important function as a vehicle for transmitting civilizational values, deserved a special place in the development of every country, regardless of its stage and level of economic development. The expert debate covered a range of issues including various aspects of sustainable development (e.g. cultural and social dimensions, economic performance conditions, technology and trade) as well as issues related to ongoing negotiations in various forums.

A. The cultural and economic importance of audiovisual services

2. Audiovisual services, like other cultural industries, have a significance that transcends their economic value. Experts agreed that audiovisual services were a nation-building instrument that ensured due respect for cultural diversity, traditions, national values and heritage. Audiovisual services contribute to the dialogue among cultures that is the basis for long-lasting peace and sustainable human development. They are a means of education, delivering ideas and raising consciousness about public goods. In addition to their primary importance as a carrier of culture, audiovisual services have become increasingly important for economic development, especially in terms of generating employment and wealth, and are creating opportunities for economic diversification into nontraditional sectors; in other words, they are a pillar of the new economy. Audiovisual services would also seem to be relevant for international trade, since they help promote the image of a country abroad and thus enhance tourism. Therefore, they have major implications for development.

3. Many experts were of the opinion that, in comparison with other services sectors, audiovisual services appeared to be a particularly sensitive sector because of the unique nature of cultural trade and exchange. While there was agreement regarding the function of audiovisual services, opinions diverged on how to address them in the context of increasing interdependence among countries.

4. Some experts stressed the need to establish a new pillar at the international level that would contribute to a common understanding and treatment of issues inherent in culture. Some of these participants felt that, without such a pillar, the World Trade Organization (WTO) in general and the General Agreement on Trade in Services (GATS) negotiations in particular were an inappropriate forum for the consideration of issues related to audiovisual services. In this connection, the notion of an international instrument of cultural diversity and the possible role of the United Nations Educational, Scientific and Cultural Organization (UNESCO) was emphasized, and it was argued that such a pillar would be a necessary step in bridging the link with trade. However, the view was also expressed that such an instrument would not be likely to receive support from the international community at large if its aim was institutionalization or legalization of the "cultural exemption".

B. Issues to consider in strengthening the audiovisual services sector at the national level

5. A number of preconditions appear necessary in order for countries to be successful in the area of audiovisual services. These include an appropriate regulatory framework at the domestic level; a dynamic cultural policy; the availability of a critical mass of quality products; the availability of qualified professionals all along the production and distribution chain; access to distribution networks in foreign countries; legal instruments to counteract anti-competitive practices; respect for intellectual property rights; and a favourable environment for enterprise development and employment creation in these industries. In addition, specific measures and positive actions would be necessary to help developing countries build creative and supply capacities in audiovisual services.

6. In many countries, audiovisual services are a highly regulated sector. Markets alone cannot provide the required conditions for the development of audiovisual services, especially in developing countries, and active public policies are necessary to attain this goal. Experts recognized that Governments could play a pivotal role in the development of the sector. They also acknowledged the leading role of regulations in increasing the interaction of the audiovisual services sector with economic development. Experiences presented by experts from both developed and developing countries referred to a number of instruments and policy measures being applied to ensure that cultural and social objectives were achieved. Contrasts emerged with respect to the differing capacities of Governments to employ various policy tools and approaches in all segments of audiovisual services. Developing-country experts stressed the challenges their countries were facing in establishing an appropriate regulatory framework. Some experts noted that under certain conditions deregulation might lead to healthy domestic competition, which would result in rapid market development. The conclusion emerging from the expert interventions was that there could not be a “one-size-fits-all” policy approach in the area of audiovisual services.

7. Experts noted that in the audiovisual services sector there was particular difficulty in drawing the line between regulations aimed at protecting culture and those aimed at regulating trade flows. Experts recognized protection as a legitimate objective of public policy but felt that protection should not become regulation in the negative sense of unwarranted protectionism leading to the insulation of markets. To address these issues, criteria and solutions needed to be developed before countries could embark on specific commitments in the context of the trade negotiations in this area.

8. Elements considered essential for domestic audiovisual policies ranged from content requirements and direct and indirect support to investment-related measures. In the course of the expert debate, it became apparent that the level and degree of regulation differed from country to country. Experts discussed the role of subsidies for development of audiovisual services. A number of experts stressed the importance of subsidies in ensuring the viability of local production and in promoting cultural creativity, diversity of views and innovation. Other experts described how the removal of public support had led to the collapse of important segments of their country’s audiovisual industry. However, the limited financial

capacities of developing countries did not allow them to rely on subsidies as the primary tool for developing audiovisual services.

9. The domestic market remains the first priority in developing a viable audiovisual services sector. The majority of experts expressed concern regarding the high penetration of their domestic markets by foreign films. Experts from developing countries noted the inability of their industries to secure market share for their products. The production value chain requires significant investments, and very few experts from developing countries highlighted their countries' success in film production. A factor contributing to such success appeared to be a national economy large enough to enable the country to recoup its investment. Privatization of production also seemed to improve the availability and quality of locally produced audiovisual products.

10. Experts stressed the importance of television and broadcasting as an area where developing countries had and could build capacity. In developing countries, television remains the most effective means of reaching the population at large, including remote and poor communities. Experts noted that, despite initial expectations concerning the impact of the Internet on traditional segments of audiovisual services, television remained the most powerful means of distributing cultural content, and that for developing countries it currently had more potential than the Internet, because of wider reach and lower local programming costs. However, concerns were expressed about the tendency to import foreign programmes at "dumped" prices, which diverted resources that otherwise could have been used to produce local content. With regard to the least developed countries (LDCs), experts noted the problems of technological, infrastructure and human resource under-development as well as the acute lack of locally produced programmes.

11. Experts recognized the importance of public broadcasting as a means of mass communication and education. It was suggested that UNCTAD jointly with UNESCO could examine issues involving trade in audiovisual and education services. Countries that are opening up their television markets to private investment should consider making their public television channels independent, thus allowing these to be competitive with the new private channels, especially in light of the spread of satellite broadcasting. For this, sufficient funding and new technologies should be made available for public television. At the same time, all television broadcasters could play a role in promoting domestic production of films, music and other audiovisual products.

12. Radio was the first means of mass communication and retains its important role, especially in the poorest countries and for the dissemination of local music. Experts shared their experiences with privatization of radio stations, which had resulted in rapid growth in the number of stations, and considered the development to be in general a positive one. The impact of the recent allocation by the World Radio Conference of frequencies for non-commercial purposes needed to be assessed in terms of local radio network development.

13. Music is an area in which many developing countries have achieved high domestic market share as well as international recognition. It was noted that, because of piracy and

lack of access to music distribution networks and advertising revenues, developing countries could not reap the full economic benefits of their success in this area.

14. To become competitive in regional and international markets, local producers in developing countries need to achieve the necessary critical mass and, accordingly, sufficient supply capacity. A strong domestic market and local supply capacity are necessary for development of export capacities. Experts from developing countries stressed that, while plenty of local creative talent was available, because of structural constraints it could not be transformed into productive capacity. For LDCs and low-income countries, the development of audiovisual production relied on the access to technical and financial support, development of skills, and cooperation from development partners and multilateral funding agencies.

C. The importance of technology

15. Experts had a substantive debate on technology-related issues. They recognized that technology played a particularly important, even determining role in all segments of audiovisual services, and that new technologies were fostering new types of services. The convergence of telecommunications and media was influencing the type of product supplied, and, accordingly, technology was not neutral in audiovisual services. Technological advances had provided greater opportunities for the production and export of audiovisual services, while challenging some of the traditional assumptions of cultural policy in this sector. The rapid development of technologies highlighted the need to constantly adapt regulatory measures; in this context, developing-country experts spoke of shifting targets, because of the capacity of technological developments to circumvent the regulations in place at any given moment.

16. The Internet was seen by experts as a new paradigm, regulatory responses to which remained sketchy, with the best approaches yet to be established. Some developing countries have successfully used this new medium to reach out to their expatriate communities. At the same time, concentration of market power among Internet access providers was mentioned by some experts. With the growing penetration of commercial models for providing information on the Internet, positive measures may need to be considered at the international level to ensure that the public domain, including e-government, remains available to the public at large.

17. The impact of new technologies remains at the core of the debate in the music industry, especially with respect to the role of the Internet and the industry's need to adapt to the digital environment. Young consumers increasingly feel that music should be freely available. Piracy is therefore becoming one of the most serious problems the industry faces, and participants noted the importance of respecting and enforcing intellectual property rights. Experts suggested that the trade aspect of this issue could not be solved until technology appropriate for linking it with trade was developed.

18. Experts from developing countries underlined the importance of avoiding situations in which technology became a barrier for their countries' development and exports. Innovative and affordable solutions, with an emphasis on providing access to technology at the community level, could be suggested in some cases in developing countries. Training in necessary skills and basic literacy was needed by the poor of some developing countries before these countries could consider how to benefit from new technologies. Developing countries faced the challenge of linking their economies with the new technology as a way of creating a new economy. In view of the importance of ensuring and enhancing access to networks, UNCTAD, together with other international organizations, including UNESCO, the International Telecommunication Union (ITU), the World Intellectual Property Organization (WIPO) and WTO, was invited to continue work in further elaborating the concept of access to networks.

D. International trade in audiovisual services and the GATS

19. Experts recognized that export capacities in audiovisual services relied on the domestic capacity to produce and the ability to obtain necessary financial resources as well as access to technology, distribution channels and information networks. Other issues, such as vertical and horizontal integration of major suppliers, anti-competitive practices and actions like dumping, and control of access to distribution channels may also affect the ability of countries to export. These factors appear to play a bigger role than any others in restricting the entry of developing countries into international markets. In the absence of international rules on competition policies, the need to strengthen competition policies and international enforcement was pointed out as a priority area of concern. UNCTAD was invited to continue its analytical work on this issue.

20. At the same time, international trade remains an important source of income for major producers of audiovisual products, since creation is costly, demand conditions are uncertain and producers need to recoup their production costs.

21. Audiovisual services seem to be a sector where many problems and concerns are common to countries at all levels of development. Audiovisual services provide scope for consensus building and are amenable to achieving an outcome that balances the interests of exporters and importers of services, and of developed and developing countries, provided the culture/trade divide is overcome.

22. It emerged from the expert debate that the majority of developing countries might have an inherent creative capacity and potential to export. Some segments of the audiovisual market may provide better trading opportunities because they rely on lower capital requirements and may also face lower barriers to market entry. "Free-media zones" and regional trading arrangements could provide a first platform for developing supply capacity.

23. Experts stressed that, for countries facing acute supply-side limitations, co-production agreements – whether regional or between developed and developing countries – might

provide a unique opportunity to market their products beyond national borders as well as to sustain their domestic industries. For example, the European Union has provided support to film production in countries belonging to the African, Caribbean and Pacific Group of States. Without such support, most films in these countries would not have been produced. Moreover, films sponsored by the European Union are considered domestic productions as far as quotas are concerned. The increasing number of such arrangements was noted. Preferential agreements are particularly important for audiovisual services, where cultural and linguistic affinities are more important than national and territorial borders.

24. The audiovisual services sector is an area in which many developing countries have existing and potential export capacity, but where their enhanced participation in international trade requires that developed countries take appropriate positive measures. In a way, this sector is a test case for the effective implementation of GATS Articles IV and XIX.2. In addition, the importance of rules emanating from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the General Agreement on Tariffs and Trade (GATT) concerning trade in audiovisual products has to be taken into account in the process of progressive liberalization in the context of WTO.

25. Experts addressed audiovisual services and the GATS without reaching a consensus on the present adequacy of the GATS framework for making specific commitments in the audiovisual services sector. In discussing the main concepts related to trade in services, experts agreed that the GATS was based on the well-defined principle of most-favoured-nation (MFN) treatment, or non-discrimination, as an obligation, as well as on the principle of negotiated national treatment. However, MFN treatment does not automatically open markets. Making commitments under the GATS implies an obligation to refrain from introducing new restrictions; however, the GATS does not prescribe policy objectives, nor does it give recommendations on how to pursue non-trade objectives. The GATS is a framework not for deregulation but for progressive liberalization, which in some cases entails the introduction of new regulations or re-regulation. The complex structure of the GATS results from Governments' desire to attain two competing objectives: to have a legal framework for binding commitments enforceable through the Dispute Settlement Body, and to have a flexible structure with the widest possible regulatory space, by way of which countries can choose the sectors they want to liberalize and attach limitations to their market opening. For example, the GATS provides scope for addressing the issue of investment or anti-competitive practices under its Article VIII.

26. In the ongoing negotiations in services, some countries made proposals to address a number of outstanding issues concerning audiovisual services, including cultural subsidies and cultural safeguard mechanisms. Developing countries see that liberalization in the GATS is expected to bring positive results both for their developing industries and for their export interests. Currently, WTO members are engaging in bilateral negotiations. Decisions will have to be made in the GATS negotiations in bilateral and multilateral settings on how to focus the debate on audiovisual services. In order to achieve progress in the negotiations, substantive elements relevant to the audiovisual services trade have to be identified and the appropriate legal response in the GATS framework determined. In addition, negotiations

could consider how to address the issue of the temporary movement of artists and other personnel involved in the audiovisual services trade under mode 4.

27. The GATS addresses only a limited set of regulations under its market access and national treatment measures. The numerous other regulatory issues that do not form part of the specific commitments are not within the purview of the GATS, which provides no guidance.

28. Three approaches to addressing audiovisual services in the context of the ongoing GATS negotiations were discussed. Some experts expressed their unwillingness to address audiovisual services in the context of the GATS, especially in the absence of an international instrument on cultural diversity. Another approach, which took into account the sensitivities of this sector, considered that the GATS provided a sufficiently flexible framework for addressing these specificities. The last approach stressed the importance of bringing audiovisual services under the purview of the GATS by inviting countries to undertake specific commitments on a “standstill” basis. Concerns were expressed by experts regarding the impact of the standstill obligation on policy flexibility, especially in developing countries. Experts also underscored the inability of developing countries to take into account all the interrelated factors and assess the possible trade implications for their development in the sector concerned and in general.

29. One proposal suggested that a standstill provision in the form of a predictable solution and enhanced transparency in the audiovisual sector would by itself provide a level of security. In further development of the international trading system, it was important to make provision for including the cultural content of developing countries. At the same time, in developing GATS rules, including a safeguard mechanism, the possibility should be considered that these rules might be used by and against all WTO trading partners. However, the negotiations were not currently progressing enough to permit even considering the concerns and issues of developing countries.

30. A number of countries, including some developing countries, felt that excluding audiovisual services completely from multilateral services trade negotiations did not appear appropriate. From the viewpoint of a developing country, liberalization without regulation of services in such areas as environmental or financial services is more sensitive than corresponding liberalization of audiovisual services. Some participants felt that the GATS framework provided enough flexibility to accommodate concerns regarding environmental and financial services. Similarly, approaches could be established for addressing audiovisual services in this context. Balance had to be sought in the negotiations across all areas of interest, including the sensitive ones, since all countries had concerns with some degree of sensitivity in one area of trade or another. It was important for countries to exercise caution in pursuing other initiatives that might override or conflict with the discussions conducted in WTO. Developing countries supported development of the emergency safeguard mechanism in all services sectors, including audiovisual services. Developing countries were looking to the GATS for predictability and as a possible way of achieving increased competition.

31. Participants felt that the expert meeting had made possible an open, constructive debate, which in turn had contributed to a better understanding of the issue. Further clarification was required concerning the legal framework that could establish a link between the GATS and other international instruments, and the implications this would have for the types of specific commitments.

32. Participants recognized that dialogue should continue at the international level between experts and government officials in the field of culture and trade as a means of ensuring coherence in approaches, and to identify elements necessary to establish an interface between culture and trade policy.

33. An expert from a least developed country expressed concern that some participants had described the situation well but had not addressed or identified ways of increasing participation by developing countries in line with implementation of GATS Article IV and the objective of the meeting.

34. Experts stressed the importance of continuing collaborative efforts between UNESCO and UNCTAD in line with the issues addressed during the meeting. Recognizing the institutions' different mandates and areas of expertise, the experts recommended that the two organizations work together in the following areas:

- (a) jointly continuing to analyse the structure and behavior of the markets for audiovisual services and their interface with culture, trade and development;
- (b) analysing the relationship between audiovisual services and education, with the results of such analysis being presented to a future expert meeting for further consideration;
- (c) extending support to experts and delegations by providing a forum for continuing discussion of the link between trade and audiovisual services, so as to identify possible instruments and approaches that would take into account both the sensitivities surrounding cultural diversity and the trading interests of countries;
- (d) facilitating the dialogue between experts and government officials in the fields of culture and trade as a means of ensuring coherence in approaches;
- (e) analysing the opportunities provided to developing countries by regional and preferential trade arrangements for fostering their integration into the world markets for audiovisual services; and
- (f) working together to provide policy advice and technical assistance to developing countries in order to enhance audiovisual services infrastructures at the national level within the Global Alliance for Cultural Diversity in collaboration with other organizations.

35. UNCTAD was invited to continue working in potentially trade-related areas of audiovisual services, in particular by:

- supporting experts and delegations by providing a forum for continuing discussion on the interface between trade and audiovisual services.
- More specifically, it was requested that UNCTAD focus on issues such as the following:
- treatment of competition issues in general and in the context of specific areas of audiovisual services;
- the role of co-production and preferential trade agreements, including regional trade agreements;
- identification of possible modalities and mechanisms for approaching liberalization of audiovisual services while addressing public policy and trade-related concerns (a comprehensive study is needed to address the nature and modalities of government support measures, including subsidies and other potentially trade-related policy instruments aimed at enhancing the supply and export capacity of developing countries); and
- identifying ways of overcoming the challenges facing developing countries in their access to distribution channels and information networks, taking into consideration new market developments, technology and regulations. A comprehensive policy study on modalities and mechanisms for giving developing countries effective and affordable access to information networks and distribution channels could be useful in this respect.

Chapter II

II. ORGANIZATIONAL MATTERS

A. Convening of the Expert Meeting

36. The Expert Meeting on Audiovisual Services: Improving Participation of Developing Countries was held at the Palais des Nations, Geneva, from 13 to 15 November 2002.

B. Election of officers

37. At its opening meeting, the Expert Meeting elected the following officers to serve on its bureau:

Chairperson: H.E. Mr. Hardeep Singh Puri (India)
Vice-Chairperson-cum-Rapporteur: Mr. François Léger (France)

C. Adoption of the agenda

(Agenda item 2)

38. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in document TD/B/COM.1/EM.20/1. The agenda for the Meeting was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Audiovisual services: Improving participation of developing countries
4. Adoption of the report of the Meeting

D. Documentation

39. For its consideration of the substantive agenda item, the Expert Meeting had before it a note by the UNCTAD secretariat entitled "Audiovisual Services: Improving Participation of Developing Countries" (TD/B/COM.1/EM.20/2).

E. Adoption of the report of the Meeting

(Agenda item 4)

40. At its closing meeting, the Expert Meeting authorized the Rapporteur to prepare the final report of the Meeting under the authority of the Chairperson.

Annex

ATTENDANCE *

1. Experts from the following States members of UNCTAD attended the Meeting:

Angola	Mexico
Argentina	Morocco
Australia	Netherlands
Barbados	Nicaragua
Belarus	Niger
Bolivia	Nigeria
Brazil	Peru
Canada	Poland
China	Republic of Korea
Cuba	Romania
Democratic Republic of the Congo	Rwanda
Dominican Republic	Saint Lucia
Egypt	Saudi Arabia
Ethiopia	Senegal
Fiji	South Africa
Finland	Switzerland
France	Thailand
Germany	Togo
Greece	Trinidad and Tobago
Honduras	Tunisia
Indonesia	Viet Nam
Iran (Islamic Republic of)	Yemen
Italy	Yugoslavia
Madagascar	
Malawi	
Mauritania	

2. The following intergovernmental organizations were represented at the Meeting:

African, Caribbean and Pacific Group of States
League of Arab States
European Commission
Organisation Internationale de la Francophonie
South Centre

* For the list of participants, see TD/B/COM.1/EM.20/INF.1.

3. The following specialized agencies and related organizations were represented at the Meeting:

International Fund for Agricultural Development
International Labour Organization
International Telecommunication Union
International Trade Centre
United Nations Educational, Scientific and Cultural Organization
World Trade Organization

4. The following non-governmental organizations were represented at the Meeting:

General Category

International Confederation of Free Trade Unions
International Co-operation for Socio-Economic Development
World Federation of Trade Unions

5. The following institution attended the Meeting:

European Broadcasting Union
