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Kakabadse, Mario A

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**The WTO And The Commodification
Of Cultural Products : Implications For Asia**

By

Mario A Kakabadse

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Implications for Asia"**

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Dr. Mario A. Kakabadse

Counsellor

WTO Secretariat, Geneva

Note: The views expressed in this paper are those of the author and not necessarily of the organization for which he works

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Introduction: Broadcasting, technology and trade negotiations

I am very pleased to be here representing the multilateral institution which sets the rules for international trade in order to address this very distinguished gathering in such a vital part of the world. Let me say at the outset that the organizers of this conference have set me a very challenging theme: namely the "WTO and the commodification of cultural products". Does this mean that the World Trade Organization, concerned as it is with trade liberalization, has turned audiovisual and other cultural products into commodities? And if not, does it mean that such a process is inevitable? And what could this imply for the countries in this region?

Before turning to these questions, it is important to recall that the coming into being of the World Trade Organization is taking place at a time when technological developments are rapidly resulting in ever increasing numbers of audiovisual programme services being available to households all over the world. This tendency is further increased by big production or distribution companies starting to get involved in launching their own satellite channels in Europe, in Asia and elsewhere. A decade ago, international trade officials were scarcely involved in broadcasting and telecommunications services issues. But technological advances in the three main sectors of the information technology industry - computing, telecommunications and broadcasting - are blurring the conventionally understood boundaries between them. New technologies like fibre optics, which have dramatically reduced the cost of telecommunications transmissions thus broadening market boundaries, are providing a rapidly expanding choice of transmission possibilities and new programme options. While national regulators struggle to keep pace with the new media technologies they are facing an array of complex policy issues including the transition from protected monopolies to open competition between telecommunications and broadcasting service operators, the development of new technologies and associated standards, as well as the need to promote the interests of domestic film and television programme industries.

Such changes are creating new market opportunities which are profoundly changing the way telecommunications and broadcasting companies are doing business in the international economy. One result of these developments is that traditionally regulatory areas have become market access issues addressed under the GATT Uruguay Round negotiations. The most important issues that were addressed were how to liberalize trade in audiovisual or "cultural" products, how to ensure better protection of intellectual property rights of such products and, more recently, the Uruguay Round set up the mechanism for the liberalization of basic telecommunications services. Although the subjects were not intimately

connected during the negotiations, they all have implications for the future regulation of, and international competition in, broadcasting and telecommunications services.

I. Historical perspective

The dichotomy between commerce and culture, between trade liberalization and cultural protection - or between "Cola and Zola" as The Economist newspaper once put it - goes back much further in time than the WTO or the Uruguay Round. Take the GATT itself, for example: the principle of exempting cultural exchanges from trade liberalization rules has been recognized by the United States and its trading partners for nearly half a century. In 1947, when the GATT was drafted, Article IV of the General Agreement authorised the imposition of national screen quotas for "the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized". To give you a flavour of the arguments made at the time let me quote a brief extract from an intervention by the United Kingdom delegate in the debate:

"The case of films ... brings in a very important cultural consideration such as does not come in the case of other commodities. We think it is quite clear that countries will not allow their own film production which affects their own culture and ideas, to be swamped by imported films simply because the latter happen to be better organised commercially. Some perfectly reliable method of safeguarding domestic film production is needed and will in fact be insisted on by a great many countries. The method of the screen quota is much the most effective, perhaps the only effective method of attaining this desired object. We must therefore preserve our right to use this method."¹

It is a moot point whether screen quotas were an effective way of safeguarding European domestic film production in the 1940s and whether television quotas which reserve a minimum proportion of screening time for local productions are an effective way of safeguarding European TV programming in the 1990s. Indeed, the member states of the European Union are currently very divided, as is the European Commission itself, in the debate about what to do with Europe-wide television quotas: whether to reinforce them as the French want or to phase them out as the majority seem to want. I am not going to get into this debate right now - the point I want to make is that the GATT has recognized the particular cultural character of films from the beginning in the form of an exemption to the national treatment obligation.

This recognition of the special character of audiovisual products is not limited to the GATT. The United States-Canada Free Trade Agreement of 1989 specifically exempted cultural products - covering films, videos, TV and radio broadcasting, sound recordings as well as the print media. And if one looks at individual country legislation it is the case that foreign ownership of television and radio stations is often either prohibited or severely restricted for reasons that include national security and social and cultural considerations. This is so in New Zealand, the Philippines, Canada and the United States where, if a foreigner wants to own an American television station, he must first become an American citizen; the Australian, Rupert Murdoch, became an American citizen shortly before acquiring an American TV station.

Many countries also maintain local content rules for broadcasting or film distribution for similar reasons - think of the European Union or, in this region, Indonesia which restricts the import of films because of the strategic importance of the local film industry for developing cultural values; films are considered to be a means of public enlightenment and not merely of commercial gain. All of these

¹Quoted in Note by the GATT Secretariat for the Working Group on Audiovisual services, 4 October 1990 (MTN.GNS/AUD/W/1).

examples illustrate that cultural and particularly audiovisual products should not be placed on the same footing as general merchandise. At the heart of the discussion between free trade for all products including cultural products and the need for protecting cultural identity is the question of how widely the rules for trade liberalization can sensibly apply to the cultural sphere.

In approaching this question I have briefly looked at past experience in the GATT. In order to better understand what the "new" GATT - the WTO - means for trade in cultural products I think that the most useful thing I can do is to focus on three main issues: First, the new World Trade Organization or WTO - what is it and what difference will it make to international trade? Second, what does the "commodification of cultural products" mean in the WTO context or, more precisely, what actually happened in the audiovisual negotiations in the Uruguay Round and where are we now? And finally what are the implications of those negotiations for the media and cultural industries of the countries in this region?

II. What is the World Trade Organization?

The starting point for understanding how the WTO came into being is the Uruguay Round, the biggest and most difficult trade negotiation in history which produced results on a scale no one thought possible when it was launched in 1986. There has been no comparable achievement in international economic cooperation since the creation of the Bretton Woods institutions in 1944: and this is an apt reference because one of the results of the Round will be the disappearance of the GATT and its replacement by the World Trade Organization, thereby finally completing the Bretton Woods economic order.

But the creation of the WTO is in a way only a by-product of the Uruguay Round; the idea would not have been convincing if the negotiations on substance had not produced major results. If you look at those results, you will see that there are 27 separate legal agreements and 25 000 pages of national commitments - liberalizing commitments on market access for goods and services - which entered into force on 1 January 1995 together with the WTO. What this adds up to is an unprecedented reform, liberalization and expansion of the world trading system; let me dwell for a moment on what I mean.

Reform: the system has been reformed because the existing rules of the GATT have been updated to reflect the realities of today's complex trading environment and the multilateral dispute settlement system has been strengthened and made more effective. The liberalization of trade in goods alone resulting from the Uruguay round is estimated to increase annual world income by up to \$500 billion by the year 2005. And in terms of expanding the system, key sectors of trade such agriculture and textiles are now squarely within multilateral rules as well as the new areas of services and intellectual property protection. In one area alone - the protection of intellectual property rights - we have the toughest and most comprehensive international agreement concluded in that subject in this century. The services Agreement which brings the most rapidly growing sector of world trade under multilateral disciplines for the first time is even more important, in particular for the audiovisual sector.

The need for a new institutional structure emerged because people were thinking about how to bring the new disciplines on services and intellectual property under the GATT umbrella. Those subjects had been forced onto the agenda of the Round by the United States and then other industrialized countries in the face of opposition from many developing countries. It was clear from the beginning that the "à la carte" approach of the Tokyo Round (the previous major trade round of the 1970s), when governments could choose at the end of the negotiations which of the results they would agree to (and many developing countries rejected most of them) was not going to be acceptable. Without an acceptable agreement on services the USA would not have been able to accept liberalization on textiles nor would the European Community in agriculture and the whole deal would have collapsed. This approach means that if a country wants to join the WTO it must accept everything that was negotiated in the Uruguay Round on the basis of "take it or leave it - all of it".

What does this imply for the membership and functioning of the WTO? How different will it be from the GATT? In some ways I think the WTO will be very like the GATT - small, efficient and relatively cheap to run. We employ about 400 people, which is twenty times smaller than the World Bank for example and in 1993, at the end of the biggest trade negotiation in history, the total cost of the GATT was only 67 million dollars. But in other ways, the WTO is bound to be different. First, as I have just said, its rules will be more uniformly applied. There will still be some elements of preferential treatment for developing countries but in the main all member countries - whether developed or developing - must abide by the same set of rules in all areas covered by the WTO. In the longer term this will benefit developing countries not just because the preferential system in the GATT has been a disappointment, with the preferences largely concentrated in areas where they are not competitive, but because the main value of the GATT system is not the benefits a country receives in export markets, important though these are, but the stimulus to efficiency in its own economy from exposure to international competition.

Secondly, the WTO will be more nearly universal than the GATT in its membership. We now have 125 members, and more than 20 countries - including China, Taiwan, Vietnam and Russia - are negotiating for membership. This is extraordinary in itself. The GATT system was designed to promote competition and cooperation between market economies. It is based on the premise that governments agree the rules and then step back to leave the trading to businessmen. That premise must be maintained, and the readiness of the old centrally planned economies to live by it will be the fundamental test of their reform programmes.

Third, the new system will cover a much wider range of subjects. The Round has extended the rule of law to cover virtually every aspect of world trade now and in the future. In addition to improving existing disciplines in goods trade and reinforcing the dispute settlement mechanism to make it speedier and more efficient, GATT rules will now apply to the major growth areas of international trade, notably intellectual property and services. Up to now these have been completely outside the multilateral system and therefore exposed to arbitrary intervention and to limits on their growth potential.

III. Services and the Uruguay Round

This brings me to one of the most important results of the Uruguay Round - services - indeed almost certainly the most important result: if nothing else had been achieved in the Round at all, to have brought the enormous sector of trade in services under GATT disciplines and the GATT commitment to open markets would in itself be the biggest development in the trading system since the second world war. The fact that the old GATT covered only trade in goods represented an enormous gap in the system. In most developed countries services already account for over 60 per cent of GDP and of employment and they are growing faster than other economic activities. In Asia, the service sector is also becoming more important in national economies: according to Merrill Lynch services were estimated in 1992 account for over 70 per cent GDP in Hong Kong, over 60 per cent in Singapore and Taiwan and over 40 per cent in Thailand, South Korea, the Philippines, Malaysia, Indonesia and India.

A. Services in world trade

Cross-border trade in services (covering such things as international transport, reinsurance transactions and cross-border broadcasting) is already over one-fifth of total trade and growing fast - and this is only a small part of total trade in services, the most important element of which is sales in export markets through affiliates and subsidiaries established there - in other words through foreign direct investment. Asia's share of total cross-border trade is approximately 17 per cent but it is growing considerably faster than the world average and the Asian region includes some of the world's most dynamic service suppliers. Total trade in services of the ten biggest Asian economies increased almost three-fold in the 1980s albeit from a low base. Highly competitive sectors include air transport where

the national airlines of Malaysia, Singapore and Thailand regularly lead the rankings in polls of international business travellers; and so do Asian hotel groups such as the Shangri-La and Mandarin Oriental chains. Part of Singapore's growth strategy is based on the active promotion of services that can be traded internationally: banking and finance as well as transport and communication. Both Singapore and Hong Kong are competing to become a regional base for satellite broadcasters which have significant regional plans.

In fact the audiovisual sector is a rapidly growing economic activity which has benefitted from the increasing demand for entertainment all over the world, a demand that has been fuelled by deregulation, privatization and rapid technological progress which has seen television technology moving towards greatly increased channel capacity, the development of new programme options and new delivery technologies including satellites, fibre optic cables and the increasing overlap between broadcasting, telecommunications and computing.

These developments are nowhere clearer to be seen than in the European Community, the world's fastest growing market where, during the 1980s, the number of television channels available had increased from 36 to 125, one obvious consequence being a vast increase in the number of hours of broadcast time to be filled. The United States, which dominates world trade in audiovisual services as far as media products in cinema, television and video production is concerned, was clearly best placed to benefit from the sudden increase in European demand unmatched by local productive capacity to meet it. In 1992 exports of American media products to Europe were worth \$3.7 billion, up from \$2.3 billion five years earlier - and this despite a 1989 EC Directive requiring member states to devote a majority proportion of television transmission time to programmes produced in Europe. The EC's audiovisual exports to America were in comparison only a modest \$300 million.

It was this situation, perceived in Europe, and particularly in France, as an invasion of American programming - or as the former French culture minister put it "as an imposition of a uniform culture on the whole world" - which led to an acrimonious stand-off between the United States and the European Union at the end of the Uruguay Round. At that time, roughly from October to December 1993, the debate in Europe on the potential effects of the Uruguay Round on the audiovisual sector - films, TV and radio broadcasting, sound and video recording - centred on one big question: 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 production - could be destroyed? (Although the dispute essentially concerned American-European bilateral relations, the same question can be asked in relation to other markets, in Africa or in Asia: is there anything to fear from the results of these negotiations with respect to the survival and growth of national cultural industries such as audiovisual?)

The answer was, and remains, a resounding "no". Before I explain briefly the outcome of the Round, let me stress that nothing in the services agreement envisages the deregulation - let alone the total deregulation - of any services sector. Under the WTO governments retain the freedom to regulate the culturally and politically important broadcasting media and other cultural industries - in fact nobody has ever suggested that this freedom should be taken away from them either for broadcasting or for any other service. The second point to stress is that the services agreement will not prevent governments from funding audiovisual projects; obviously, much indigenous film-making is dependent on government support and that can continue.

B. The services negotiations in the Uruguay Round

Having made those two points, I would like to briefly review the facts: what did the Uruguay Round specifically result in and how does it affect audiovisual services? The Round is important because

it has resulted in two agreements² - the GATS and TRIPS agreements - which for the first time set down a number of binding obligations for all WTO Members in the area of media and cultural services. The agreement on intellectual property gives global copyright protection, for the first time, to film-makers, musicians and creative people of all kinds; it represents a major advance in the fight against copyright piracy. The GATS agreement is essentially about identifying and then progressively reducing market access barriers and about extending national treatment - or the same competitive opportunities - to foreign suppliers and foreign services.

The GATS agreement in three simple principles:

- the first is total coverage - all services are covered, with the single exception of landing rights in the air transport sector;
- the second is national treatment - services suppliers from other members of the agreement operating in or selling into a foreign market must be treated no less favourably than domestic suppliers with respect to any laws or regulations affecting their operations;
- the third is non-discrimination - there must be no discrimination between other members of the agreement in terms of the treatment given to their service suppliers.

These are very powerful principles: if they are applied one hundred per cent, it would create something close to free trade in services immediately. Since there are no customs duties on services the effective means of protection is discrimination against foreigners, which comes in many forms - from refusal to recognise qualifications of foreign accountants or lawyers to outright prohibition of foreign investment in broadcasting; abolishing discrimination means abolishing protectionism. This would not be the end of regulation: nobody suggests that it is not necessary to have stringent conditions on entry to the professions, or prudential control of broadcasting, for example. But it would mean the end of special barriers to international trade in services.

However, nobody expected to achieve free trade in the first-ever multilateral negotiations on services, and in fact nobody could have lived with it. Even the US, the most ambitious of all the participants, could not agree to lift protection from the maritime transport industry. It was never going to be possible simply to negotiate general obligations, applicable to all services, and leave it there. So the negotiation was really in two parts, the first being about the drafting of the general obligations and the second about the extent to which each member country would open up its own market - in other words about exceptions from the principles of total coverage, national treatment and non-discrimination.

It was agreed that every member must submit, and have accepted by every other member, a schedule specifying the services on which it is prepared to offer market access and national treatment, including any limitations the country wishes to maintain on that access. It therefore sets out the conditions under which the supply of the specified service to that market will take place - and those conditions are bound: like a bound tariff they cannot be altered for the worse without paying compensation to countries whose trade is damaged by the change. These bindings therefore provide security - a guarantee for importers and exporters of services that the conditions under which they are trading will not be changed to their disadvantage. Like the security offered by bound tariffs, this alone should do much to stimulate business. Nothing cools investment like instability of government policies.

²GATS: General Agreement on Trade in Services; TRIPS: Agreement on Trade-Related aspects of Intellectual Property Rights.

But the commitments in the services schedules go much further than tariff bindings because they cover not just cross-border trade but all four of the "modes" by which services can be traded - by selling them across borders, buying them in overseas markets, supplying them through direct investment in the export market and through movement of individuals selling their services abroad. This covers therefore all means of trade in broadcasting services which is conducted on the basis of establishment in importing countries, direct foreign broadcasts and cross-border trade in the case of recorded television programmes.

As a result of the Round, 95 schedules of commitments (counting the EC as one) are already in force, having been approved by Ministers last year in Marrakesh. Unfortunately, there is no easy or concise way to assess their value in terms of trading opportunities. There is no substitute for reading the detail of what is offered, and one may need expertise in the industry to make an informed judgement of its value. For example, people ask how much real liberalisation of access to service markets has been achieved - in other words how far have restrictive or discriminatory regulations been eased or abolished. That is hard to tell without detailed knowledge of the regulations in force before the schedules were finalised. To my knowledge, no serious work has yet been done anywhere on estimating the tariff equivalent of a given set of regulations affecting a services activity or sector.

C. Results in the audiovisual sector

Turning to the situation in the audiovisual sector, I would like to make three points. First, the sector was not withdrawn from the GATS at the end of the Uruguay Round in December 1993, despite mistaken press reports to that effect. It was difficult to exempt the audiovisual sector from the negotiations, because there was agreement among all the participating countries that no sector should be excluded. If, say, the European Community had excluded audiovisual because it presented difficulty for them, others would have sought to exclude, say, maritime transport or financial services, which the Europe and France badly wanted included. Secondly, to exclude audiovisual would have meant that countries able and willing to offer market access in that sector - and several have done so already - would be prevented from doing so. Why should they be told they can't do it?

In fact, thirteen countries have made commitments on audiovisual services in their schedules and these have entered into force with the rest of the Uruguay Round results. In addition to the United States and Mexico most of the countries to have made commitments are from Asia and they cover the following activities: motion picture and video tape production and distribution, motion picture projection services, radio and television broadcasting (including cable TV) and sound recording and distribution. The commitments are binding in the sense that no new measures may be imposed that would restrict entry into the market or the operation of the service or service supplier.

Looking at the commitments in the Asian region more closely, the following picture emerges:

- Singapore, Hong Kong, Korea, Thailand and India limited their offer to motion picture or video tape production or distribution, India restricting the import of films to 100 per year ; Korea and Singapore have added an offer in sound recording.
- Malaysia covers films and videos and has made a limited offer in broadcasting services covering only cross-border transmission from abroad and limited to 20 per cent of total screening time. Thailand has granted access to foreign suppliers for the production of radio TV programmes only.

Second, the schedules of the European Community, as well as other countries including Indonesia and Australia in the Asia-Pacific region include no commitments on audiovisual, so that they have no liberalization obligations in this sector. In other words, the television quotas contained in the European TV Directive remain untouched by the GATS. This shows that the reality of the services agreement is that access to the audiovisual market - like any of their service markets - is something the Uruguay

Round participants can offer or not; some have done so and some have not. For those countries that have not entered any market opening commitments in their schedules for the audiovisual sector, they are only subject to the transparency and MFN (or non-discrimination) obligations which apply across the board, whether commitments have been given or not. Even that is mitigated in the case of the EC for example, by the extensive MFN exemptions which have been listed and which cover the possible imposition of redressive duties in response to unfair pricing practices, measures which discriminate in favour of works of European origin, cultural cooperation agreements and aid-granting measures such as the MEDIA programme. The GATS specifies that these exemptions should in principle not exceed a period of ten years and that, at any rate, they shall be subject to negotiation in subsequent rounds.

Third, there is no cultural exception clause or other specific reference in the GATS agreement to audiovisual services. In particular, no clause was inserted which would provide for:

- a "cultural exception" envisaged by the French government in Article XIV of GATS (under Article XIV Members are not prevented by any of their GATS obligations from taking the necessary measures to protect public morals and human health, maintain public order, etc.); a general culture exception was considered in the negotiations and rejected.
- recognition of the "cultural specificity" of audiovisual services, as envisaged by the EC Commission and intended to allow for special treatment for the sector in the process of progressive liberalization, rather than exempting it completely from the trade rules of the services agreement; this option was rejected by the United States.

This means that in legal terms there is no distinction between this sector and any other sector. When the schedules come to be renegotiated in five years time, therefore, nothing would prevent requests for liberalization being addressed to the EC or Indonesia, and equally nothing would oblige the EC or Indonesia to accede to them. To summarize, therefore, the rules of the GATS apply to audiovisual services as they apply to all other services; there is no special recognition of their cultural character. However, because of the agreed mechanism of making commitments in the market access area, all countries have considerable flexibility in handling trade in audiovisual services. In the sense that they can decide whether they wish to offer market opening guarantees for any particular service activity. In addition, the GATS provides particular flexibility for the developing countries wishing to open fewer sectors or to liberalize fewer types of transactions in future negotiations, thus making explicit their rights to extend market access in line with their development situation.

After the breakdown of negotiations between the United States and the European Community at the end of the Round, there was no attempt to continue GATS negotiations on the subject of audiovisual services during 1994. This is in contrast to the establishment of negotiating groups for other sectors which were not finalized, namely financial services, maritime and basic telecommunications. This means that since December 1993 there have been no negotiations on audiovisual services in Geneva. Since the 1 January of this year, the World Trade Organization has entered into force and has recently set up its main working bodies. One of these, the Council for Trade in Services, will oversee all matters relating to the GATS Agreement. The Services Council is scheduled to meet for the first time at the beginning of March where it will set up sectoral bodies on financial and professional services which will deal with the details of sector-specific negotiations. It remains to be seen what may be decided with respect to trade in audiovisual services.

IV. Implications of the Uruguay Round for Asian countries

The immediate implications of the Uruguay Round for countries in this region in the area of audiovisual policy derive from the two agreements - on services and intellectual property. In the

longer term, however, the ongoing negotiations on basic telecommunications will have important implications for the liberalization of trade in services.

A. Services

The outcome of the services negotiations is that signatories to the GATS agreement may continue to take the necessary measures to safeguard their audiovisual/media services. The agreement:

- respects the autonomy of individual countries with respect to the choice and regulation of their broadcasting system, including the method of its financing;
- permits individual countries to deal with technological and other developments affecting their audiovisual sectors;
- ensures the maintenance and development of national measures to safeguard media pluralism in the broad sense;
- and safeguards the development of privileged cultural cooperation with neighbouring or other countries regarding, for example, co-production agreements or financial aid schemes.

Given the flexibility of the services agreement, the Uruguay Round has not treated culture as just another commodity. However, the countries that I have mentioned in the Asian region that have taken on liberalization commitments will have important obligations from the start as they are required to fulfil those market access commitments according to the terms and conditions entered into their schedules. The medium-term prospects for them, and also for countries that did not make commitments in the audiovisual sector such as Indonesia, will be determined by the fact that the GATS will engage all Member countries in a process of progressive liberalization. Article XIX calls for successive rounds of negotiation with a view to achieving a higher level of liberalization, the next such round to take place in no more than five years time. How far such negotiations would deal with audiovisual services will be a matter for Member governments to decide at the time. Article XIX does not specify the speed and extent of liberalization and recognizes that it shall take place with due respect for national policy objectives although there is no specific mention of the preservation of cultural identity.

Second, although the GATS in its current form does not affect the continuation of existing systems of financing for film production, it does provide for negotiations to develop disciplines on trade distorting subsidies but there is no presupposition as to what they will contain or how different they will be from the rules on subsidies in the goods area. Like all GATT negotiations, these would take place as the base of consensus, and I do not believe that governments - whether European or Asian - would abandon their explicit right to support film production.

B. Intellectual Property Protection

The TRIPS Agreement will oblige all member countries that wish to benefit from the WTO to apply Berne Convention standards enforceable for the first time through a dispute settlement mechanism. Producers of sound recordings must be granted an exclusive rental right - the right to authorise or prevent the commercial rental of their works. An exclusive rental right will also apply to films where commercial rental has led to wide spread copying which is materially impairing the right of reproduction. Performers are given protection against unauthorized recording and broadcasts of live performances (i.e. bootlegging). Protection provided to performers and producers of sound recordings will last for at least 50 years and will be applied by all signatories.

The TRIPS agreement will be implemented within transition periods generally of one year for developed countries, five years for developing countries and transition economies and eleven years

for least-developed countries. A TRIPS Council has been created to monitor the operation of the Agreement and the compliance of governments with it. For the first time a multilateral agreement will contain detailed obligations on governments to provide effective means of enforcement, including border measures and criminal penalties against copyright piracy. All WTO Members are thus required to provide procedures and remedies under their domestic law to ensure that intellectual property rights can be effectively enforced by foreign-right holders. Requirements include provisions of evidence, injunctions, damages and other civil remedies including the right of judicial authorities to impose imprisonments and fines sufficient to act as a deterrent in cases of wilful trademark counterfeiting piracy on a commercial scale.

Also for the first time in the field of copyright an effective dispute settlement mechanism will be available in the event that a member country fails to respect its obligations under the TRIPS agreement, including the possibility of being subject, as a last resort, to retaliation not only in the area of TRIPS but also in the areas of trade in goods and services.

C. Telecommunications and broadcasting: future perspectives

During the Uruguay Round over 50 countries made market opening commitments in the area of "value-added telecommunications services". Commitments in the area of "basic telecommunications services" were not negotiated seriously during the Uruguay Round because the supply of such services continues to be restricted to government monopolies in many countries and was therefore not subject to commitments. It was therefore agreed that negotiations on basic telecommunications services should be extended for a further two years - until 30 April 1996 - at which point the commitments resulting from the negotiations will be added to the relevant schedules. In the post Uruguay phase, a large number of countries, including Hong Kong in the Asian region, have begun negotiations on the liberalization of basic telecommunications. These negotiations are due to be completed next year but in the longer term an emerging issue of greater importance is the international regime that will govern the rapidly expanding and overlapping fields of telecommunications and the broadcasting media. The outline of future communications systems is in the process of being clarified and its precise shape will depend to a considerable extent on government policies of privatization and deregulation as well as the international structure that will emerge through such negotiations as are happening in the WTO currently. It is important that the negotiating process in the WTO should create an agreed set of rules which provide for market access in a more liberalized global telecommunications regime that take account of the need to ensure competition in a world of increasing technological and regulatory overlap between telecommunications and broadcasting. The negotiations that have taken place in the Uruguay Round on audiovisual services and the continuing negotiations on basic telecommunications are significant, if only, preliminary steps in the general direction of more liberal trade in services.