

Government considers trade strategies

The members of the World Trade Organisation are preparing for Ministerial meetings at the end of the year when the scope of further negotiations about trade liberalisation will be settled

It's more than five years since the world's major trading powers finalised a set of agreements intended to free up world trade, but it's about to start all over again.

The agreements, signed in Marrakesh in 1994, ended eight years of negotiation in the "Uruguay Round" among the members of the General Agreement on Tariffs and Trade (GATT). The GATT became the World Trade Organisation (WTO) as part of the new arrangements.

The Marrakesh package included new rules covering areas of economic activity not previously subject to comprehensive global trade rules, such as "services" and intellectual property, which are becoming more important to the global information economy.

These new agreements did not force the kind of liberalisation of national assistance arrangements in the world's audiovisual and other service sectors which the strongest supporters of free trade would have liked to see. A very public brawl between the European Community, driven particularly by the French, and the Hollywood-advised US administration, saw the services agreement leave considerable flexibility for member states to assist their local service industries.

Australia was one of many countries which chose to make no commitments to remove or amend audiovisual support measures such as local program quotas, foreign ownership restrictions for commercial television stations, co-production arrangements, taxation concessions and subsidies for film and television development, production and cultural activities.

But the agreements were important for the Australian film and television industry because they committed member states to come back to the table to enter into further negotiations with a view to "progressive liberalisation" over time.

That's what the Australian government is preparing for now. At the end of this year, WTO trade ministers are meeting to set the framework for a new round of trade liberalisation negotiations, a "Millennium Round". They will need to decide what issues are going to be addressed, the timeframes and the priorities. At this stage, Australia, always a leader of the free trade pack, is encouraging a "comprehensive" round, with as many areas of trade up for negotiation as possible. Ministers will balance the benefits of this approach, which maximises the possibilities for deals to be cut, with its capacity to paralyse the process and diminish the prospects for short-term gains.

Australian audiovisual production industry groups (AGSC, ASDA, ASE, AWG, MEAA, SPAA) have made a submission to the government's public consultations about the Millennium Round. The

submission, written by the Communications Law Centre, argues that the federal government must ensure that any future global trade agreements allow Australia to maintain, adapt and introduce new measures to encourage local film, television and new media production and distribution.

Since the conclusion of the last Uruguay Round, world trade in audiovisual services and the importance of information, communications and cultural industries to the world economy have grown substantially. Ownership of the major companies in these sectors has consolidated.

In Australia, the media business has become much more international. Film and TV production and foreign investment in film and television projects and production facilities have risen. Australia's audiovisual exports have increased strongly but so too have imports. Some major Australian audiovisual companies have been bought by overseas interests, while others have made overseas acquisitions of their own.

There have also been many changes to Australia's assistance arrangements. These have included reductions in direct funding (FFC and AFC), changes to local program quotas (to allow New Zealand programs to qualify as Australian) and the introduction of the Film Licensed Investment Companies scheme.

Production industry organisations have opposed further liberalisation of government audiovisual support measures for several reasons. First, Australia's audiovisual industry is already highly internationalised. The goals of trade liberalisation -

growth in trade and internationalisation of economic activity - have occurred while preserving Australia's ability to support Australian film and television production for local and global audiences.

Second, current assistance arrangements are essential to sustain domestic cultural activities and industries. Australia will not be better off, culturally or economically, by getting rid of them. Indeed, Australia's assistance arrangements can be seen as part of an international web of support measures in small countries, designed to ensure that the world's audiovisual economy and audiences' TV and cinema screens are not completely dominated by the images and sounds of Hollywood. Healthy industries in small countries ensure that distribution and exhibition channels exist for the generally more specialised output of other small countries like Australia.

Third, the production and circulation of cultural goods and services are critical not just for Australian culture but for Australian democracy. Unregulated markets and internationalisation may inhibit some forms of cultural production and distribution. Since cultural goods and services "convey information which helps...to shape people's opinions, values and tastes, ... access to and participation in culture imply issues related to freedom of expression and opinion and its extension, people's right to know. These rights and freedoms are intimately linked to the vitality of democracies".¹ The "confident Australia" promoted in the federal government's 1997 Foreign and Trade Policy White Paper, *In the National Interest*, will not emerge without spaces for the creation and circulation of Australian cultural goods and services.

Finally, the Australian government has recently confirmed its support for major elements of the current

mix of support measures. Its response to the Gonski Report endorsed the broad framework of support and subsequent budgets have continued funding for most agencies. The government is committed to amending broadcasting legislation to make the Australian content requirement for pay TV effective and to ensure the liberalisation of program quotas to admit New Zealand programs does not extend to providing similarly favourable treatment for programs from other countries.

One of the fall-back options which will inevitably be considered by the strongest supporters of free trade in services in the Millennium Round will be a "standstill" - getting countries who don't want to remove existing measures at least to agree not to introduce any new measures. This option is a particular danger for the fast-moving media and communications sectors.

The experience since the Uruguay Round has demonstrated how critical it is for old measures to be adapted (particularly fine-tuning the Australian content standard for commercial TV and fixing up the ineffective pay TV Australian content requirement) and for new measures to be introduced (FLIC's, the Commercial TV Production Fund, the Australian Multimedia Enterprise, SBSI, a documentary quota). A cultural policy which is not dynamic, or which cannot be applied to emerging media, is not a cultural policy at all.

So production industry groups have also opposed amendments to the WTO services agreement which would restrict the flexibility available to member states to maintain, adapt and introduce measures to encourage audiovisual culture and industries.

A critical part of the negotiations about services trade will be the treatment of the Internet and elec-

tronic commerce. The increased importance of these areas over the past five years is one of the biggest factors shaping the whole Round. The new rhetoric of friction-free commerce, speech and cultural expression over the Internet provides a Trojan Horse for the old arguments against assistance for local film, television and other cultural activities.

Two issues which are likely to get considerable attention in the Millennium Round are investment and competition. The ambitious plans for a Multilateral Agreement on Investment among the rich countries of the Organisation for Economic Co-operation and Development (OECD) collapsed last year. However, supporters of a tough set of rules limiting national governments' ability to regulate the conduct of companies investing within their jurisdictions, are shifting their focus to the new WTO Round.

On competition policy, the global concentration of businesses across all economic sectors is forcing increasing co-operation among competition regulators around the world. Regulators recognise that a merger between two companies headquartered in one country, where other competitors exist, might have major implications for competition in another country, where they do not. This is a real issue for Australian companies facing competition from the vertically integrated production, distribution and exhibition entities which now dominate all sectors of the audiovisual business. These huge conglomerates are often both clients (as distributors and broadcasters) and competitors (as

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¹ Giroux, D (1999) "What is the nature of cultural goods and services and how should they be defined for the purposes of upcoming trade negotiations?", <http://www.cem.ulaval.ca>

or if there is no reason for the employee to expect that they are not being videoed. Obvious examples include employees in casinos, banks and service stations.

There is no prohibition on monitoring activities outside a building. This would include monitoring people in a car, under a verandah or in a backyard.

In Victoria, under the *Listening Devices Act* it is prohibited to listen to private conversations but such listening can take place if the parties involved consent to it. In such circumstances employees should be told they may be taped so that they carry a presumption that it might take place.

There are no laws which prohibit employers from monitoring the email and Internet use of employees. Jenkins said that the computer as a business tool should be used as such. Increasingly inappropriate sending of email and Internet material to fellow employees has resulted in harassment claims which has encouraged employers to make sure that

such inappropriate use is not occurring in the workplace. It is important that employers develop clear policies in these areas so that employees are not in any doubt that such uses can and will be monitored.

The final speaker was Jan Whitaker, a board member of Electronic Frontiers Australia. She agreed that there are a number of circumstances such as health and safety where monitoring might be reasonable but questioned the time for which such surveillance material should be kept, and whether employees should have an opportunity to comment on or clarify the material.

She said that Victoria's new *Data Protection Bill* would address issues concerning the collection of personal information in public and private circumstances.

The Victorian Surveillance Devices Act will come into effect in January 2000 but has not been written with the workplace specifically in mind. The definition of "private activity" excludes an activity

carried on outside a building or an activity where parties might reasonably expect that they might be observed by others.

The definition of "private conversation" does not include a conversation which might reasonably be expected to be overheard by others. Whitaker argued that most places in the workplace are public and would therefore not be covered by the definitions in the legislation. While a toilet or changing room should be covered by this new legislation, this is not made clear in the language of the Act.

The Act will restrict the use of electronic listening or optical devices in a private setting without the consent of those involved. Whitaker believes that all parties in the surveillance circumstance need to know what is going on and accept that the reason for monitoring is valid. Civil liberties don't stop at the door of the workplace.

Bruce Shearer

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Federal Government Direct Funding for Audiovisual Industries 1993/94-1999/2000 (\$m)¹

	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	1999/2000 ²
Film							
AFC	17.9	19.8	20.5	16.7	15.5	15.6	16.5
FFC	57.0	54.0	50.0	48.5	48.0	48.0	48.0
ACTF	2.0	2.1	2.3	2.3	2.3	2.3	2.3
AFTRS	10.5	10.7	13.0	12.5	12.4	12.0	17.0
CTPF	-	-	20.0	19.2	14.2	-	-
Film Australia	6.5	6.4	6.6	6.4	6.5	6.5	6.7
NFSA	9.1	9.1	12.5	11.9	11.8	13.7	18.5
AME			45.0		(16.0)	(13.3)	
Sub Total Film	103.0	102.1	169.9	117.5	94.7	84.8	109.0
Adjusted Sub Total (less CUC)							100.7
Broadcasting³							
ABC	531.5	515.1	522.2	531.2	500.5	507.2	561.4
SBS	72.7	75.7	78.9	79.4	80.0	83.1	91.6
SBSI		1.0	4.3	4.2	4.2	4.6	4.6
Sub Total SBS	72.7	76.7	83.2	83.6	84.2	87.7	96.2
Sub Total Broadcasting	604.2	591.8	605.4	614.8	584.7	594.9	657.6
Adjusted Sub Total (less CUC)							594.2
TOTAL	707.2	693.9	775.3	732.3	679.4	679.7	766.6
Adjusted Total (less CUC)							694.9
Consumer Price Index 1993/94=100							

producers) for Australian independent producers.

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Jock Given

Source: Compiled by the CLC from AFC (1999) *Get the Picture* (5th Edition), AFC, Sydney, p20; Federal Budget Papers 1999/2000; Annual Reports

1. Excludes Federal Government funding for broadcasting regulation (Australian Broadcasting Authority).
2. The figures for 1999/2000 include a "capital user charge" (CUC) introduced as part of the implementation of accrual budgeting. The increase is an accounting adjustment to cover the cost of depreciation of capital assets, which was not provided for under cash budgeting. Organisations with substantial capital assets have thus received substantial increases in their appropriations which do not reflect increases in the real value of the resources they have available to spend.
3. The ABC and the SBS appropriations in 1999/2000 exclude amounts provided for transmission facilities. These were previously appropriated to the National Transmission Agency, which was privatised in 1998/99. The figures include amounts appropriated for the introduction of digital broadcasting: \$20.8 million over five years for the ABC and \$17.7 million over five years for the SBS.