

i) *The World Trade Organization*

The World Trade Organization (WTO) was created out of the GATT Uruguay Round of negotiations in 1994. The traditional focus on trade in goods and the reduction of border impediments, embodied in the original 1947 General Agreement of Tariffs and Trade (GATT), changed significantly with the creation of the WTO. This agreement is the most comprehensive trade agreement ever negotiated; it includes not only goods, but also services, intellectual property and investment.

The original GATT did not contain a cultural exemption. Cultural goods were treated like other industrial products. However, Article IV of the GATT permitted screen quotas for cinematographic films, which was a derogation of the national treatment obligations. Canada did not have screen quotas at this time and cannot impose new ones because Article IV allowed only for existing quotas. Acheson and Maule state:

This measure was included in recognition of the need to provide for the postwar revival of the film industries in Europe and to ration scarce foreign exchange for the purchase of necessities. Films were considered to be special items in part because they were seen to promote the sale of domestically produced goods and services.¹⁶

The new WTO General Agreement on Trade in Services (GATS) includes a number of obligations with regard to services. It does not include a cultural exemption clause. Canada, as signatory to the agreement, is obliged by GATS unless it made a reservation or exception in this or other areas. In the GATS, countries can list exemptions to its Most Favoured Nation (MFN) obligations. Market Access and National Treatment obligations only apply to services listed in each country's schedule of GATS commitments.¹⁷ Canada listed a broad MFN exemption for its film and television co-production treaties for an indefinite period of time in its schedule of commitments. The exemption applies to production and distribution. Canada did not make Market Access or National Treatment commitments in the GATS on any cultural sector. In its schedule Canada listed an MFN exemption for film co-productions. Further, it declined to undertake market access and national treatment obligations for the audiovisual sector.

The negotiations in the audiovisual sector were contentious during the Uruguay Round. The term "audiovisual services" is the technical name used in international trade negotiations to discuss film, music, broadcasting rights, project services and other production and distribution services dealing with entertainment and information. From the American viewpoint, these negotiations were not completed successfully. From the Canadian viewpoint, Canada has

¹⁶ Acheson and Maule, *International Agreements*, 3.

¹⁷ Ivan Bernier, "Cultural Goods and Services in International Law." (Publication forthcoming in *The Culture/Trade Quandary: Canada's Policy Options*; Ottawa: Center for Trade Policy and Law.)