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English only

EBU reply to the public consultation on a future trade policy

Question 1:

Now that the new Lisbon Treaty has entered into force, how can we best ensure that our future trade policy is coherent with the EU's external action as a whole and notably in relation to the EU's neighbouring countries?

The EBU's main focus of attention pertaining to the European Union's future trade policy lies with the cultural and audiovisual sector. It is essential that the impact of any trade policy measures on this sector is fully assessed, and that the *specificity of cultural and audiovisual goods and services* is respected. In this regard, the new Treaty has further recognized and strengthened the role of pluralism and cultural diversity as core principles and values of the European Union (Art. 2 and 3 TEU).

The main regulatory guidelines remain:

- the obligation of the European Union to take into account cultural aspects in its action under other provisions of the Treaties, and particularly in order to respect and promote the diversity of its cultures (Art. 167 (4) TFEU);
- the need for the Council to act unanimously for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services, where these agreements run the risk of being detrimental to the Union's cultural and linguistic diversity (Art. 207 (4) TFEU);
- the fact that the exercise of the competences conferred upon the European Union by Art. 207 TFEU in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonization of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonization (Art. 207 (6) TFEU);
- the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, of which the EU is a signatory, along with the Member States.

Consequently, the EBU considers that any future trade policy will need to respect the above-mentioned principles and that it is necessary to adhere to the negotiating mandate given by the Council in October 1999, which stresses the need to ensure "that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity". This mandate reflects the European view that the audiovisual media play a significant social, cultural and political role.

For further clarification regarding the EBU's position on various aspects of the EU's future trade policy, please also refer in particular to our answer to Question 4.

Question 2:

Given the importance of boosting growth, creating more jobs and ensuring a more resource efficient and greener economy, how can EU trade policy help? What should the new trade priorities be in the light of the Europe 2020 Strategy?

The European cultural industries contribute greatly to the dynamism of the EU's economy and its competitiveness. With a 2.6 % share of its GDP in 2003 and nearly 5 million people employed, the EU's cultural sector generates and fosters economic activity, job creation, innovation and investment throughout the EU. Cultural activities facilitate the establishment of more inclusive societies and contribute to the prevention and reduction of poverty and social exclusion. The preservation of Europe's cultural heritage, richness and diversity also relies upon the resilience and viability of a vibrant cultural sector.

European broadcasters (both public and commercial) have contributed substantially to the European creative effort by financing more than 80% of original audiovisual programme production in Europe. PSBs, in particular, offer a weekly audience of 375 million Europeans original and diverse content in terms of quality, variety and impartiality. By investing more than 10 billion Euros a year in original European content, public service media provide crucial input to Europe's cultural distinctiveness and diversity. They create a sustainable environment for creators and creation and encourage further investment in the sector by other actors. 65% of PSB programming is produced in-house or commissioned from independent producers, ensuring that PSBs contribute to the creation of jobs and foster innovation and economic growth. The rich cultural content provided by PSBs also induces the deployment of Europe's information society, fuelling investment in broadband infrastructures, services and digital technology.

Consequently, the EU's trade priorities in the light of the 2020 Strategy should not jeopardize Europe's cultural richness and diversity or the viability of its cultural sector. This requires the European Commission and the Member States to remain true to their commitments under the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the 1999 WTO negotiating mandate.

Question 3:

In addition to continuing to push for a successful conclusion to the Doha Round, how can the EU best pursue overall EU trade policy objectives in the WTO?

The EBU is not in a position to make a particular proposal at this stage, but it would stress that if the Commission were to consider that working on *horizontal rule-making* in the trade context (e.g. on domestic regulation or subsidies) should be pursued and stepped up, it would be important to refrain from envisaging the application of those rules to non-committed sectors (such as the audiovisual sector).

Please also refer to our answers to Questions 1 and 5.

Question 4:

Do our current FTA negotiations provide the right geographic and substantive focus for our bilateral trade relationships in the context of the Europe 2020 strategy?

The EBU welcomes the fact that the European Union has preserved the capacity, for itself and especially for the Member States, to define and implement cultural policies for the purpose of preserving cultural diversity. This has been achieved in international trade negotiations by notifying MFN exemptions and by consistently refraining from making specific commitments on market access and national treatment in cultural services, and particularly in the audiovisual sector. It is extremely important that the EU should continue to pursue this approach, and in a technological and platform neutral way. There needs to be the same protection and scope for cultural and audiovisual policies in the online world as there is in the offline world. (See also our answer to Question 1.)

The EBU expresses a clear preference for instruments and policies serving to facilitate international cultural exchanges to be developed within the framework of the above-mentioned UNESCO Convention on cultural diversity. It regards as positive the approach developed by the Commission to implement the UNESCO Convention and strengthen international cooperation in the field of culture. The EBU also appreciates that the *protocols on cultural cooperation* which have recently been included in Economic Partnership Agreements (EPAs), Free Trade Agreements (FTAs) and Association Agreements (AAs) are based on the principles and definitions of the UNESCO Convention and highlight the consideration that cultural goods and services are not comparable to other goods and services, given their cultural value.

Where Cultural Cooperation Protocols are negotiated together or attached to bilateral (or multilateral) trade agreements, there is always a risk of undue pressure or trade-offs between cultural and economic aspects and objectives. Consequently, such Protocols should not only be governed by the principles of the UNESCO Convention on cultural diversity but should also be negotiated in a clearly separated way, with distinct procedures. This should not pose a problem where all the other parties have ratified the UNESCO Convention. The Protocols also need to be adapted to each specific bilateral agreement, taking into account the needs and interests of the cultural and audiovisual sector on both sides.

In addition, the EBU considers that measures and policies to foster cultural exchanges, and especially in the audiovisual sector, should also be considered and reinforced as part of the EU's neighbourhood policy, in line with the new Art. 8 TEU introduced by the Lisbon Treaty.

The EBU has many Members in countries outside the borders of the European Union.¹ It pursues an active policy of promoting exchanges and cooperation among all its Members, including by coordinating and supporting television and radio programme exchanges, and notably in the framework of Eurovision and Euroradio, and promoting co-productions and any other form of cooperation among its Members and with other broadcasting organizations or groups of such organizations.

¹ The full membership list available at: http://www.ebu.ch/en/ebu_members/actives/index.php.

Question 5:

Should the EU now try for closer economic integration and cooperation with such partners? What is the best way to further facilitate trade and investment, overcoming regulatory differences that may have the effect of barriers to trade and deepening our trade relationships with these important economies?

With regard to cultural and audiovisual goods and services, closer economic integration should take into account *regulatory differences* which are a natural consequence of the Member States' competence to tailor their respective cultural and audiovisual regulatory frameworks to the specific needs of their societies. Thus, any attempts to overcome such legislative differences must be limited to areas which do not affect the competences of the Member States and are susceptible to contributing to EU's objective of respecting and promoting the diversity of its cultures (Art. 167 (4) TFEU).

Question 6:

How can the EU improve the effectiveness of regulatory dialogues? How can the EU promote the establishment of and greater recourse to international standards without compromising legitimate public policy choices?

Audiovisual policies and productions will increasingly be influenced or determined by globally active electronic libraries, delivery platforms and search engines, extending to the complex financial streams underpinning audiovisual production. Those aspects must be taken into full account when negotiations are begun. Regarding regulatory aspects, see also our answers to Questions 3 and 5.

Question 9:

Given that the Lisbon Treaty gives the EU greater competences in international investment policy, how should we contribute to facilitating crossborder direct investment (both outward and inward)? What are the key issues to be addressed in agreements governing investment?

The EBU considers that the issue of investment agreements should be looked at with particular caution. Such agreements, in the light of prevailing WTO principles, could entail calling into question cultural policies and could lead to allegations that public service broadcasters and other public cultural institutions are "unfair competitors". Co-production treaties and support schemes could also be considered discriminatory against foreign firms or individuals. Thus any agreement governing investment would have to ensure that the measures adopted by Member States with regard to their audiovisual and cultural policies would not be affected.

Question 12:

How can EU trade policy ensure that the benefits of global value chains are shared by European producers, consumers and jobholders?

Please refer to our answer to Question 1.

Question 14:

How can the EU best strengthen the issue of trade and development in its trade policy? Should the EU pursue a more differentiated approach in its trade relations to reflect the level of development of particular partners? How should the EU approach the issue of trade preferences in relation to the generally low level of EU Most Favoured Nation (MFN) tariffs, which will further be eroded following the possible conclusion of the Doha Round?

Please refer to our answer to Question 4.

Question 18:

What else can EU trade policy do to further improve the protection of IPR in key markets?

In addition to the promotion of due respect for IPR rules in other countries, it should be noted, in particular, that broadcasters are still in urgent need of an international agreement for an updated, modern protection of the broadcast signal (the broadcaster's neighbouring right). Recent studies, such as the one conducted by Screen Digest and published by WIPO, confirm that online television piracy is a mass-market phenomenon today. Consequently, it is of paramount importance for the EU Commission to be, and to remain, actively engaged in any kind of *multilateral* negotiations for legally-binding instruments intended to protect the broadcasters' crucial role in Europe's creative and cultural industries. Specifically, this means the EU's engagement not only in international fora such as WIPO but also at the regional level in the Council of Europe, covering more than 25 countries around the borders of the EU.

Similarly, in *bilateral* (or so-called free trade) agreements, EU trade policy should consistently and unconditionally insist on the proper protection of EU broadcasters against all types of online piracy of their signals, i.e. via any form of retransmission or on-demand use thereof.

Question 19:

What more should the Commission do to ensure that trade policy becomes more transparent and to ensure that a wide variety of views and opinions is heard in the policy-making process?

While the EBU appreciates the existing platforms of exchange and has regularly participated in stakeholder dialogue, it would appreciate a more active and systematic approach by the Commission to establishing a dialogue with actors in the audiovisual and cultural services sector.

Question 20:

Are there additional priorities in relation to trade policy that the Commission should pursue?

Please refer to our answers to Question 1 (regarding the need to safeguard cultural and audiovisual policy objectives) and Question 4 (regarding cultural cooperation protocols).
