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WTO Regulations and the Audio-visual Sector— An Analytical Framework for Pakistan

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1. INTRODUCTION

Audio-visual services play a crucial and formative role in any society. These services are closely linked to the preservation of cultural identity and social values, and play a major role in shaping public opinion, safeguarding democratic system and developing creative potential. Due to these reasons, governments of both developed and developing countries not only provide direct and indirect incentives to their domestic industries but also strictly regulate the content of audio-visual media.

During the Uruguay Round of WTO (World Trade Organisation) negotiations, audio-visual service sector witnessed limited liberalisation. Even major players such as the EU, Australia and Canada did not make any commitments to liberalise trade in these services.

This was primarily to protect the domestic industries from foreign competition, promote their growth and to protect the cultural heritage of the nations from foreign influence. Many countries have repeatedly raised concerns about the capability of the GATS (General Agreement on Trade in Services) framework to take into account the democratic, cultural and social aspects. Others have explained that audio-visual sector is largely covered by domestic regulations and normal trade rules are not applicable to these services.

1.1. Objectives of the Study

The paper explores and reviews some existing WTO and GATS rules that affect the audio-visual sector and have an impact on the conduct of national audio-visual policies in Pakistan. There are two main agreements that regulate trade in audio-visual services: first, the General Agreement on Trade in Services (GATS) which aims at liberalising and thus increasing international trade in audio-visual services—the main focus of the paper. Second, the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), which provides the audio-visual sector with the necessary protection of content and authors and that is also key to the development of this sector, both domestically and internationally.

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Furthermore, the GATT and a series of other WTO Agreements have a potential bearing on the growth of the sector. Another agreement of potential application is the agreement on Trade Related Investment Measures (TRIMS). The TRIMS Agreement prohibits the application of certain investment measures related to trade in goods to enterprises operating within the territory of a Member. It should be noted that the TRIMS Agreement is concerned with discriminatory treatment of imported and exported goods and is not concerned with the treatment of foreign legal or natural persons or of services. Thus, the basic substantive provision in Article II of the TRIMS Agreement prohibits the application of any trade-related investment measure that is inconsistent with the GATT's provisions on national treatment or the elimination of quantitative restrictions. In particular, an Illustrative list annexed to the Agreement identifies certain measures that are inconsistent with Article III (4) or Article XI (1) of GATT 1994. These cover essentially the following types of measures: local content requirements, trade-balancing requirements, foreign exchange balancing requirements and restrictions on exportation.

The study consists of six sections. Section 2 discusses a brief overview of GATS. Section 3 is about the Summary of some of the Trade Principles under GATS. The GATS in Pakistan is covered under Section 4. The last Section 5 talks about Impact of the Audio-visual Policy, Growth of the Sector, and Investment in Pakistan.

2. A BRIEF OVERVIEW OF GATS

The creation of the GATS was one of the landmark achievements of the Uruguay Round, whose results entered into force in January 1995. The GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT): creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalisation. Services represent the fastest growing sector of the global economy and account for 60 percent of global output, 30 percent of global employment and nearly 20 percent of global trade.

The General Agreement on Trade in Services (GATS) is the first and only set of multilateral rules governing international trade in services. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution.

When the idea of bringing rules on services into the multilateral trading system was floated in the early to mid-1980s, a number of countries were sceptical and even opposed. They believed such an agreement could undermine governments' ability to pursue national policy objectives and constrain their regulatory powers.

The agreement that was developed, however, allows a high degree of flexibility, both within the framework of rules and also in terms of the market access commitments.

The General Agreement on Trade in Services has three elements: the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the "most-favoured-nation" principle of non-discrimination.

2.1. Definition of the Audio-visual Sector

The Audio-visual sector and the policies formulated thereafter are difficult to define specifically in the light of recent technological development wherein one sector overlaps the contours of other sector. However, the audio-visual sector covers programme production and distribution (software) to which equipment manufacturing (hardware) can be included. This has both notable economic importance and unquestionable cultural significance. For the purpose of this paper, the audio-visual sector is considered as including audio-visual services that are delivered nationally as well as internationally through T.V and Radio broadcasting, cinema, video sales and rental, as well as multimedia products. In the nutshell audio-visual service encompasses a wide range of services including motion picture, video tape, television and radio programme production and distribution services; post production services; sound recording services; motion pictures and video projection services; radio and television broadcasting services; talent agency services; (including the services of artists); coaching services; and other services such as, the content of multimedia products. Digital revolution resulting in so called convergence has facilitated IT (Information Technology), Telecommunication and Audio-visual sector.

2.2. Recent Worldwide Developments in the Audio-video Services—An Overview

Audio-visual sector is one of the fastest growing services sectors in the world. Over the years, the number of entertainment options has increased from radio to television to Internet. Growth rate of audio-visual services is closely related to the level of development of the country, growth of per capita income, level of urbanisation, literacy level, existence of restrictions on entertainment options etc. In most developed and developing countries the proportion of income spent on leisure and entertainment comprises a growing proportion of the average household's budget. For instance, the Canadian consumer market for entertainment services grew almost 50 percent in real terms from 1986 to 1996.

Traditionally, audio-visual service sector covered the production and distribution of audio-visual contents such as motion pictures, radio and television programmes and sound recording. Technological developments (such as Internet,

satellite and digital networks) have brought about a revolution in the way audio-visual contents are created, produced and distributed.

Technological developments have given consumers access to a multitude of entertainment and information services and have stimulated the growth of audio-visual products around the globe. On the other hand, audio-visual sector plays an important role in fostering new technologies. For example, electronically developed audio-visual products and services have increased the use of network and encouraged investments in digital networks.

In the recent years there has been an increase in delivery of audio-visual content through the Internet. With increase in Internet-based broadcasting services governments are finding it difficult to restrict the entry of foreign content into domestic markets. For example, at present, many countries have quotas for domestic programmes whereby television broadcasters have to devote a certain amount of broadcast time for local programming. This restriction will become obsolete with technological development as domestic viewers can download foreign programmes at a reasonable cost from a satellite dish or through Internet. Thus, the government of various countries will need to restructure their regulatory framework to take into account the interactivity and globalisation of production and delivery offered by the Internet-based network services.

The distribution of audio-visual content over the Internet has reduced the cost and increased the global sale of these products. This is especially true for the music industry where on-line sale and promotion of recorded music is well-established and online delivery of music on demand and web casting is growing. The growth of on-line music market will allow consumers world-wide direct access to their favourite artists at discounted prices. Consumers will be able to entirely bypass traditional retailers, with significant implications for the cost structure and configuration of the present industry. However, at present, the full potential of delivery through Internet cannot be realised due to the difficulties in protecting copyright on the Internet.

Since the creation of audio-visual content requires heavy capital investments and commercial success is uncertain, in order to reduce the risk audio-visual service providers have to distribute their products in both domestic and international markets. Access to international markets is becoming increasingly necessary to recoup production costs. This has initiated the process of globalisation in audio-visual services. Joint ventures and co-productions are some of the means by which foreign players are entering the market previously dominated by nationals. For instance, joint ventures in European film productions have increased significantly in the 1990s. Joint ventures are also common in multi channel digital broadcasting where there is a need for more differentiated service content.

The use of computer-generated digital production and special effects technologies have changed the employment pattern in audio-visual sector and increased the demand for skilled workers in this industry.

With increasing globalisation of audio-visual products, private sectors would play the leading role in deciding the optimal conditions necessary for the growth and development of network based content production and delivery. The government would act as a facilitator initiating appropriate regulatory reforms to promote the growth and development of this service sector.

2.3. Audio-visual Services in Pakistan

Audio-visual services sector is one of the fastest growing services sectors in Pakistan. Different studies have estimated various growth rates for this sector. For instance, the total size of the industry is reported to be Rs 12 billion as reported by “Media in Pakistan — VC opportunities”, TMT ventures. Of this Rs 6 billion is the advertisement spend on various media platforms and is documented. The rest comes through rental and other business models and has not been formally documented. Another study on Electronic Media Industry Report conducted by the Gallup Pakistan (2003) and the annual report of PEMRA 2002-2003 projected that on the basis of the current investment trends in entertainment industry (including films, television, television broadcasting, cable television, television software, music, radio etc.) show that this industry is expected to grow on average at the rate of 10 percent by 2005.

Some important aspects and characteristics of the Pakistani audio-visual and entertainment industry are discussed below with their potential growth.

In Pakistan, the terrestrial TV is the dominant medium, but satellite channels have made rapid inroads through cable operators, particularly in the urban areas. The results of the study conducted by Gallup-Pakistan shows that in the year 2002, nearly 42 percent of the urban TV viewers and 16 percent of the rural TV viewers have access to watching satellite TV. Accordingly around 15 million persons, including adults and children (age 10–17) claim to view satellite TV regularly or occasionally in 2002. It further estimates that over 2.5 million households in 2002 had formal or informal cable connections, which provided them access to satellite TV.

In the year 2002 Radio had an audience base of 23 million who listened to radio regularly, occasionally or casually. They included 18 million adults and 5 million children (age 10–17).

The introduction of FM Radio in the 1990s has given this medium a fresh outlook and provided new opportunities for re-engineering itself. The private radio channel FM-100 which transmits from the three major cities, Karachi, Lahore and Islamabad has a sizeable listener ship base of around 2 million. The public sector channel FM-101 owned by Pakistan Broadcasting Corporation, whose marketing rights have been purchased by a private company, has also done well and is estimated to have nearly one-third share in the FM radio audience. However with the granting of radio license by PEMRA to a number of groups, it is expected that the FM-Radio market will take a new turn in the coming years.

The total advertising expenditures in the year 2001-2002, in Pakistan was to the tune of Rs 7.25 billion. It included the advertising revenues earned by television (3 billion), newspapers and magazines (3.15 billion), radio 0.16 billion and outdoor/point of purchase advertising (0.94 billion).

The advertising on television came almost entirely from large enterprises. The estimates show that the share of Multinational and Foreign Joint Venture companies in TV advertising revenue was 54 percent as compared to 32 percent for local companies. It has also been estimated that the sources of television advertising are heavily concentrated among the fast moving consumer goods (FMCGs). While these sectors play an important role in the TV advertising revenue of our country, in other Asian countries, their role is less dominant. In contrast sectors such as automobile and retail outlets which play a dominating role in TV advertising in several other Asian countries are virtually absent from the Pakistan scene.

Looking ahead into the future, there is the possibility that as television channels multiply in number they would focus on smaller and niche audience. In doing so some of the traditional lines of demarcation between the sources of advertising on TV, print and outdoor advertising would disappear or get diluted.

The forecasts for the year 2010 shows that the advertising revenue could increase to over 13 billion Rupees (*under year 2000 constant prices*), keeping in pace with the projected growth rate for the large scale manufacturing (LSM) sector. The existing advertising revenues particularly in the case of television are heavily concentrated on one side of the dividing line. The other side is low on business and low on advertising. TV advertising is concentrated among Large Scale business and absent from the SMEs; it is concentrated in FMCGs but very low in other sectors. It is conceivable that once these dividing lines are crossed a new; virtuous cycle could be tapped whereby increase in advertising expenditure and business growth on the less active side of the dividing line would go hand in hand. The dividing lines which we have identified are; the Urban-Rural divide, the Large city-Small town divide, the FMCG-other sector divide, the Large Scale Enterprise-SME divide, the Domestic-Overseas divide and the National-Global divide. It is broadly estimated that by 2010 advertising revenues could be raised upto 17 billion Rupees (*at constant year 2000 prices*) if these additional efforts were to come into play.

Currently the advertising revenue earned by the medium of television mostly goes to the state owned channels, PTV and PTV-World. This premier position is bound to be challenged by the newly emerging private sector channels.

The emerging scenario of the TV market suggests that the share of advertising in the financing of television will decline over time. A large share will be borne by viewer subscriptions paid to cable operators or other providers of the TV signal. However it appears that the process of collecting revenues through this source will be slow and painful in Pakistan. Therefore it will be sometime before the new channels can count on this source of funding.

The study has concluded that approximately 12-15 TV channels combining multi-focus bouquet and specialised regional and niche subject specialisations, will find commercial success over a period of 5 years. As the size of total advertising budget increases, its principal beneficiaries are likely to be the new channels, both because of their cost efficiencies for venturing into untapped business areas and their overall grounding in a marketing mind set.

3. SUMMARY OF THE TRADE PRINCIPLES UNDER GATS

The two most important rules of general application in the GATS are most-favoured-nation treatment (MFN) under Article II. MFN provides that the best treatment given to the supply of the service from any nation, whether that nation is a WTO member or not, must be given to all WTO members. Anything carve-outs in this respect are strictly limited rather these are called MFN exemptions covered under Article II. These MFN exemptions are in principle to last for ten years i.e. under the end of 2004. MFN exemptions are in fact permitting more favourable treatment to be given in the situation specified to selected members. The other principle is of transparency. It's a general obligation meaning that WTO members are under an obligation to inform each other of the policy they implement in the Audio-visual sector (as well as all other sectors) and to publish relevant regulations.

3.1. Other Principles

National Treatment vide Article XVII requires that a government treat foreign interests no less favourably than it treats domestic persons or companies. Government programmes which favor domestic persons or companies are said to be "discriminatory" against their foreign counterparts. It also requires a uniform treatment of foreign interests with national borders. Thus, if local governments provide varying standards of treatment within a country, then foreign interests are entitled to the best local treatment available, no matter where in the country they operate.

Market Access vide Article XVI requires a government to allow foreign interests to enter its national market, free from a number of direct or indirect limitations. This principle is also referred to as the application of a National Treatment during the pre-establishment phase of an investment. This is also described as "freedom of entry" and "right of establishment".

Prohibition on Performance Requirements prevents a government from placing requirements on foreign interests related to employment; investment; export; transfer of technology; or local sales, content, and production.

Country-specific Reservations are negotiated to remove more narrow areas of government law-making authority from the rules of the agreement, for a particular country-member.

An important exception in this regard is that no cultural clause or other specific reference has been inserted in either GATS or audio-visual service. However, Article XIV of GATS state that members are not prevented by any of their GATS obligations from taking the necessary measure to protect public moral and human health, maintain public order etc. In particular the general exception for measure necessary to protect public moral vide Article XIV (a) provides the possibility to Members to apply regulations for instance in the area of audio-visual content, intended to preserve public morality.

3.2. Audio-visual Services under GATS

The agreement covers all internationally-traded services, for example, banking, telecommunications, audio-visual, tourism, professional services, etc. It also defines four ways (or “modes”) of trading services:

The Audio-visual sector constitutes one of the sub-sectors of communication services.

Article 1.2 of the GATS defined trade and services as encompassing following four modes of supply:

Mode of Supply	Definition	Example Relevant to Broadcasting
Cross-border Supply	Supply of services in the territory of one Member into the territory of another Member.	Selling transmission rights for the television and radio programmes buyers in other countries. Transitional satellite broadcasts.
Consumption Abroad	Supply of services in the territory of one Member to a service consumer of another Member.	Contracting parts of animation production to companies in another country.
Commercial Presence	Supply of services by a service supplier of one Member through commercial presence in the territory of another Member.	Company offices of foreign distributors being established in another country. Joint ventures.
Presence of Natural Persons	Supply of services by a service supplier of one Member through the presence of natural persons of that Member in the territory of another Member.	Foreign production experts or professional actors being sent to work in another country for a specified period of time.

- Issues of ‘cross-border supply’ could arise when considering local content quotas;
- ‘consumption abroad’ has implications for the production of programmes and is especially relevant to defining ‘Pakistani’ animation programmes;
- ‘commercial presence’ is likely to be relevant in terms of broadcasting ownership and control rules; and
- ‘Presence of natural persons’ is relevant in terms of defining a Pakistani programme.

In the Services Sectoral Classification List, which was drawn up during the Uruguay Round based on the United Nations Provisional Central Product Classifications (CPC), audio-visual services were listed as a sub-sector of the communication services. Under the Services Sectoral Classification List, audio-visual services have been classified into six sub-sectors. These include:

(i) Motion picture and video-tape production and distribution services.

This category includes:

- promotion or advertising services;
- motion picture or videotape production services;
- motion picture or videotape distribution services;
- other services in connection with motion picture and videotape production; and
- distribution.

(ii) Motion Picture Projection Service.

This category includes:

- motion picture projection services;
- video-tape projection services.

(iii) Radio and Television Services.

This category includes:

- radio services;
- television services;
- combined programme making and broadcasting services.

(iv) Radio and Television Transmission Services.

This category includes:

- television broadcast transmission services;
- radio broadcast transmission services.

(v) Sound Recording.

(vi) Other (it could cover, for example, the contents of multimedia products).

For the sub-category of radio and television transmission services, it sometimes becomes difficult to determine exactly the boundary between services classified under

telecommunications and those classified under audio-visual services. As a general rule of thumb, however, it has become accepted that commitments involving programming content are classified under audio-visual, services, while those purely involving the transmission of information are classified under telecommunications. Furthermore, ownership of cinemas could fall under "Recreational, cultural and sporting services" and ownership of video rental outlets under "Retailing services".

4. GATS IN PAKISTAN

Services sector have an important role in the economy of Pakistan. It contributes more than half of the GDP and account for around 45 percent of labour force in the country. Since the services have six broad sectors in the national accounts for calculating GDP therefore, the combined share of it in the GDP is around 52 to 53 percent. During the decade of 1990s it has shown a growth of 4 to 5 percent per annum.

Pakistan has taken a cautious approach while making commitment in the services sector on market access, national treatment and MFN treatment. Since the services sector in Pakistan is far less developed than that of developed countries, therefore, open trade in services will put the country at a great disadvantage due to the comparative advantage principle. The country was full aware of the fact that since there is no compulsion under GATS for a member country to make necessary specific binding or commitment, therefore, only those commitments were made wherein it were beneficial for the country. Pakistan made comprehensive initial commitments vide document number MTN.GNS/W/170 of 20th September, 1993. It covered 20 services, fall under 5 services group. Pakistan specified that it offer was conditional subject to the extent a nature of commitment made by other participants, particularly in the sector/sub-sector and mode of supply of interest to Pakistan.

The initial offer of commitments was in fact supplemented with a number of qualifications and explanatory note which in fact are equivalent to horizontal limitations. These are stated below:

- (a) **General Legal Provision.** The offer is subject to relevant laws, rules, regulations, procedures, decisions, administrative actions and any other measures applicable in Pakistan, whether at the Federal, Provincial or local levels. It is also subject to the terms and conditions prescribed by the concerned professions and regulatory bodies in Pakistan.
- (b) **Measures of General Application.** Unless otherwise indicated against a particular sector or sub-sector, the commitments shall be subject to the following measures of general application:
 - (i) If the supply of a service, in respect of which a commitment is made by Pakistan, involves the import or export of equipment and/or goods, the relevant laws, rules and regulations pertaining to the importation or

exportation of such equipment and/or goods, including any customs duties, shall apply.

- (ii) "Consumption abroad" shall be subject to any measures including exchange regulations applicable from time to time to the movement, and consumption abroad of services, by Pakistanis or Pakistan-based consumers.
- (iii) All matter pertaining to acquisition of land and/or property shall subject to relevant laws, rules and regulations.
- (iv) Commitments under 'Commercial presence' shall be subject to the conditions that the foreign supplier is incorporated in Pakistan with maximum foreign equity participation of 51 percent, except in the case of representative offices.

The specific commitment schedule was modified in 1994 wherein more commitments were made in the field of financial and telecommunication services however, the remaining four areas remain unchanged.

The Schedule of Specific Commitments has two parts: (1) horizontal commitments and (2) sector specific commitments.

- (1) Horizontal Commitments (Concerning all sectors included in the schedule). are stated below.

- (a) Limitations on Market access: These cover modes 3 and 4.

For mode-3 these are as follows.

- (i) Except in the case of representative offices where specifically provided for in this schedule, commitments under 'Commercial Presence' are subject to incorporation in Pakistan with maximum foreign equity participation of 51 percent unless a different percentage is inscribed against a particular sector or sub-sector.
- (ii) All expenses of representative offices where specifically provided for in this Schedule, shall be met by remittances from abroad. Such offices shall restrict their activities to the undertaking of liaison work or of representing the interest of the parent company abroad.

For mode-4 these are unbounded, except for measures concerning the entry or temporary stay of natural presence up to a maximum of 50 percent in superior categories (namely, Executives and Specialists) in an undertaking. These natural persons shall have been employed juridical persons of another Member for a period of not less than one year prior to the date of application for entry into Pakistan, and shall be transferred render services to the juridical person in Pakistan. Executives and specialists have been defined in the schedule.

(b) **Limitation on National Treatment.** This is only for mode-3.

Acquisition of real estate by non-Pakistanis entities and/or persons is subject to authorisation on a case-by-case basis keeping into account the purpose and location of the undertaking.

(2) **Sector Specific Commitments.** These vary from sector to sector. These are, therefore, reviewed sector wise. Of the six service sectors, tourism and related services was a new addition to the earlier list. The three sectors of Business services, Construction and related Engineering services and Health and related Social Services did not undergo a change while the two sectors of Telecommunication services and Financial services have undergone substantial changes that is in terms of increase in coverage.

4.1. WTO Rules Relevant to the Audio-visual Sector of Pakistan

Audio-video Sector is an important and influential medium for cultural expression and hence, trade in this sector is often heavily regulated for preservation of cultural identity, social values, traditional norms and customs etc.

The primary purpose of every government is to protect the domestic industries from foreign competition, promote their growth and to protect the cultural heritage of the nation from foreign influence, however the policies/regulations to be affected are:

- **Foreign Ownership Restriction in Broadcasting.** Since most countries have placed strong restrictions on foreign ownership of broadcasting. This is against the principle of national treatment and market access.
- **Bilateral Co-production Treaties.** Bilateral co-production treaties in television have been signed between a number of countries. The main purpose is to promote joint production between the countries by pooling sources of financing and by allowing for reciprocal recognition of domestic content.
- Public funding targeted towards domestic production companies.
- Requirement to broadcast minimum level of domestic content.
- Requirement to contribute to production funds to support domestic content.
- Any definition of domestic content which favour domestic performer director, producers, writers, music composers etc.
- Any form of preferential treatment for domestic persons and companies.
- Restriction on Broadcast licensing arrangement to foreign companies in Radio and Television market.
- Domestic content policies. The policy of content regulation has always fostered the development of a strong domestic production industry. While there is an economic dividend from this regulation, it has always supported creative industry which would accrue cultural benefits etc. Since it is the

cultural product of a nation that defines its identity therefore each nation's screen culture is seen to be a reflection of its own unique culture.

- Impact of national treatment, market access and performance requirement: Market access is defined primarily in terms of quantitative restrictions but also include other measures such as limits on foreign equity participation. National treatment is defined as treatment of foreign services or service suppliers no less favourable than that granted to domestic services or supplier. Favorable treatment to domestic television company discriminates against foreign interest. In the first instance, it limits the foreign television signal which cable companies may carry. Secondly, it limits the number and type of satellite services that may be carried by cable television and the basis on which they can be sold. Finally, the licensing arrangement for radio, television etc. could be challenged on the basis of Most Favoured Nation Treatment, National Treatment and market access because the award of these licenses were based on open bidding and competition from which revenue could be accrued to the licensing or regulatory authorities. Also this arrangement has presently the effect of excluding new market entrants to the disadvantage of foreign interests.

A requirement to broadcast a minimum level of domestic content, or to favour domestic performer in any other way would conflict with a prohibition on performance to use a minimum percentage of domestic content, as well as national treatment. Prohibition on performance requirement may protect foreign investor without providing the same protection for domestic investors. This would allow a government to put domestic content requirements on domestic broadcasters but not foreign broadcasters.

4.2. Trade-related Aspects of Intellectual Property Rights

The basic objective of IPR as explained in article 7 is the protection and enforcement of IPR which would contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge, conducive to social and economic welfare and to a balance of rights and obligations.

The TRIPS Agreement is a minimum standards agreement, which allows Members to provide more extensive protection of intellectual property if they so wish. Members are left free to determine the appropriate method of implementing the provision of the Agreement within their own legal system and proactive.

General Provisions

As in the main preexisting intellectual property convention the basic obligation on each member country as to accord the treatment in regard to the

protection of IPR provided for the under the agreement to the persons of other Members article 1.3 defines these persons as nationals but include persons national of legal who has a close attachment of other members without necessarily being nationals.

Article 3, 4 and 5 include the fundamental rules on national and most favoured Nation treatment of foreign nationals, which are common to all categories of IPR covered by the agreement. These obligations cover not only the substantive standards of protection but also matters affecting the availability, acquisition, scope, maintenance and enforcement of IPR, as well as those matters affecting the use of IPR specifically addressed in the agreement.

Copyright

Article 9.2 of the agreement confirms that copyright protection shall extend to expressions and not to ideas, procedures, and method of operations or mathematical concepts.

Article 10.1 provides that computer programmes, whether in source or object code, shall be protected as literary work.

Article 11 provides that the author shall have in respect of at least computer programme and in certain circumstances of cinematographic works the right to authorise or to prohibit the commercial rental to the public of the originals or copy of their copyright work. With respect to cinematographic work, the exclusive rental right is subject to impairments test: a member is excepted from the obligation unless such rental has lead to widespread copying of such work which is materially impairing the exclusive right of reproduction conferred on that member or author and their successors.

Related Rights

According to article 14.1 performers shall have the rights of preventing the unauthorised fixation of their performance on a phonogram (for example the recording of a live musical performance). They shall also have the possibility of preventing the unauthorised broadcasting by wireless means and the communication to the public of their live performance. Article 14.2 grants the producer of phonogram the exclusive reproduction right. Article 14.4 grants an exclusive rental right to the producer of phonogram. Article 14.3 provide the right to prohibit the unauthorised fixation, the reproduction of fixation and the rebroadcast by wireless means of broadcast as well as the communication to the public of their television broadcast. Article 14.6 provide that any member may in relation to the protection of performer, producer of phonogram and broadcasting organisation, provide for condition, limitation, exception and reservations.

Patent

Article 27.1 provides the patent be available and patent right enjoyable without discrimination as to the place of invention and whether products are imported or locally produced.

4.3. Intellectual Property Rights in Pakistan

Patents

Recently the Government of Pakistan enacted a new patent law which protects both process and product patents. Patents are granted for up to 20 years from the date of application. Legal remedies such as injunctions are available in the case of patent infringement.

The Government of Pakistan promulgated patent Ordinance 2000, wherein it extends protection to processes as well as product for 20 years. Provision of patent of agriculture, chemical and pharmaceutical shall commence from the year 2005.

For patent registration priority shall be given to the WTO members. If someone has already patented his creation in any WTO member country, he or she is only required to show his registration to patent office. The duration of patent is from 16–20 years and can be extended further.

Copyrights

According to estimates made by International Intellectual Property Alliance, in 2000 about 80 percent of computer software and 60 percent of motion pictures sold in the Pakistani market were pirated. Piracy of copyrighted textile design is also a serious problem. At least one local firm, however, is now distributing legitimate, copyrighted video tapes produced by U.S film studios. As a result of strengthen law enforcement; some other pirate outlets are taking steps to offer legitimate products. Sustained and stronger enforcement needs to be paid with action by the courts to prosecute and sentence the violators. The new copyright law provides for much higher penalties for piracy.

The Copyright Amendment Ordinance 2000, *inter alia* include protection of computer programmes in the form of copyright, rental rights in respect of computer programme and cinematographic work, rights of broadcasting organisation, performers and producers of phonogram.

Trademarks

Pakistan enacted a new Trade Marks Ordinance which provides for registration and protection of trade marks and for the prevention of the use of fraudulent marks. The new ordinance replaces the Trade Marks Act 1940 which provided trade mark protection but did not meet all the requirements of the TRIPS

agreement. Pakistan has done away with a requirement that pharmaceutical firms label the generic name on all products with at least equal prominence as that of the brand name, although they must still display the generic name. There also have been occasional instances of trademark infringement, including for toys and industrial machinery.

The Pakistan Trademark Ordinance 2001 has provisions on unfair competition, which is defined to include any act of competition contrary to honest practices in industrial or commercial matters. The Ordinance also places condition on comparative advertisement and stipulate that it should objectively compare the material and fairly chosen feature of competing goods or services.

Geographical indications are also protected under the Trademark Ordinance 2001. Trade secrets are protected under common law and the Trademark Ordinance 2001 (Section 67).

Pakistan's I.P Legislation follows the TRIPS standards by providing for civil and criminal remedies and also for borders measures for enforcement of IPR's. For all form of intellectual property, civil remedies are available against infringement. All decisions of lower courts i.e. the district courts are appeal able in the High Court.

The Government has also established an umbrella organisation called "Pakistan Intellectual Property Rights Organisation (PIPPO)" in order to improve the administrative and enforcement scenario.

4.4. Steps To Be Taken on the TRIPS Issue

- (i) Documentation and listening of Geographical Indication that we need to protect. We may also have need to negotiate with Iran, Turkey, Central Asian Republics, India, Bangladesh and other SAARC on mutual recognition and protection of Geographical Indications that we share with them. In addition a system, standards and procedures have to be put in place for utilising the draft law and protecting the existing geographical indications.
- (ii) We may also need to document and list all sources of Traditional Knowledge, folklore, and arts/crafts and prepare a data bank so that effective protection is provided against any unauthorised use.
- (iii) We may also need to improve the enforcement of IP Laws in view of the allegations and reservations raised by our trading partner such as USA and EU on our IP enforcement regime. In the special 301 report issued by USTR Pakistan has been retain on the watch list however there are strong indications by the US authorities that if Pakistan will not improve the IP enforcement regime there are chances that its status may be raised to priority watch list which would reflect Pakistan as an investment unfriendly country. In this regard we need to device an enforcement action plan in consultation with the law and enforcement action plan in

consultation with the law and enforcement agencies to take appropriate measures in order to improve IPR enforcement.

5. AUDIO-VISUAL POLICY, GROWTH OF THE SECTOR, AND INVESTMENT IN PAKISTAN

The main objective of the Pakistan audio-visual policy is to strike a balance between preservation of the rich cultural heritage of the nation and increase efficiency and global competitiveness of the sector through privatisation and foreign investment. Pakistani government believes that liberalisation of trade in audio-visual services would foster investment and encourage the inflow of advanced technology and skills which would, in turn, enable the domestic industry to become competitive. Liberalisation would also widen the range of choice available to the Pakistani consumers.

It has only been recently that the government started liberalising audio-visual services. Liberalisation was in a phased manner with the government carefully monitoring the impact of opening-up of the sector to private and foreign participation. Entry of private and foreign satellite channels boosted the cable television industry since they are mainly transmitted through the cable network.

The mushrooming of satellite channels has led to the growth of television programme producing industry. From a few production houses catering to the public broadcaster, the software producing industry is now characterised by large number of production houses catering for domestic and international markets.

Liberalisation has widened the choice available to the Pakistani viewers. They now have access to a wide range of channels—both domestic and international. With the advent of satellite channels, PTV is facing intense competition from these channels. It is also predicted that, although PTV currently has the highest viewer ship due to its monopoly over terrestrial broadcasting, there will be a significant drop in its viewer ship with the increase in cable penetration and growth of DTH services.

During the Uruguay Round of the WTO negotiations, the audio-visual sector witnessed limited liberalisation. Only 19 WTO member countries made commitments in this sector while 33 members (including the EU as one) undertook MFN exemptions specific to this sector. Many countries have repeatedly raised concerns about the capability of the GATS framework to take into account the democratic, cultural and social aspects. Other has explained that the audio-visual sector is largely covered by domestic regulations and normal trade rules are not applicable to these services. Although it cannot be denied that the audio-visual services play a crucial role in transmission and diffusion of cultural values and ideas, excluding them from trade cannot be an ideal solution, considering the growing commercialisation in this sector. Therefore, in the current round of negotiations, the challenge before the WTO member countries is to strike a balance between promoting and preserving national cultural identity and liberalising trade in audio-visual services.

Any commitments in broadcasting should take into account the role and responsibility of PTV—the Pakistani public broadcaster—and the special privileges which it enjoys. PTV has a social responsibility and hence it can not be compared to a commercial broadcaster. It is likely that, in future, PTV will continue to receive both regulatory and financial support from the Government.

It has been pointed out that an offer consistent with the existing policy will increase Pakistan's bargaining power and enable the country to gain from liberalisation commitments under the GATS. Any initiative to liberalise trade through multilateral negotiations can only be successful if it is backed by appropriate domestic reforms.

The study investigates whether the Pakistan's audio-visual policy has been successful in striking a balance between the preservation of the rich cultural heritage of the national and growth through economic integration. The study found that Pakistan has successfully sustained its cultural diversity in the process of globalisation. Competition from foreign players has encouraged the domestic sector to upgrade its technology to global standards and improve the quality of productions. It has also increased the range of choice available to Pakistan's consumers.

Until a few years ago, the audio-visual industry was divided into two groups. One group believed that opening up of the economy would make the sector vulnerable to international competition and this would lead to cultural degeneration. The other group has pointed out that access to international technical know-how and skills would enable the sector to achieve global standards and access to finance would lead to economies of scale. The government itself was very skeptical about opening up the sector and hence, the process of liberalisation is slow and hesitant.

6. CONCLUSION

The paper has analytically explored some of the WTO and GATS regulations that are relevant to the audio-visual sector in Pakistan and carry some very important future implications for this emerging service sector. Although Pakistan is neither a signatory of any of the commitments in this sector nor has entered into any agreement under the GATS Umbrella Agreements, nevertheless the potential implications of the future negotiations on this sector will be of crucial importance for which we as a cultural nation must be well prepared to face and tackle any such challenges.

REFERENCE

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