



**UK POSITION ON EU/US FREE TRADE AGREEMENT:
REQUEST FOR INFORMATION FROM DCMS
RESPONSE FROM THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)**

19 April 2013

Introduction

The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people in the audiovisual industry.¹ Audiovisual material includes broadcasts, films and video games. Stakeholders across the value chain for audiovisual material are represented by BSAC. BSAC has worked closely with policymakers in various government departments including HMRC, DCMS, BIS and IPO to provide an informed lead on emerging business trends and to provide advice on policy.

BSAC has a history of engagement with international trade negotiations, putting together a group representing the European film industry, and actively supported by a broad cross-section of audiovisual companies in the UK, that acted as an advisory body to DG Trade over the course of the GATS discussions in the late 1990s/early 2000s. We are particularly well-placed to advise on trade issues given the breadth of our membership across the audiovisual sector, and our ability to draw on specialist legal and economic expertise where necessary.

Overview and Summary

BSAC welcomes the opportunity to respond to the request by DCMS for information regarding the UK position on audiovisual with regards the EU/US free trade agreement (FTA). We strongly support the objective, set out in the final report of the US-EU High Level Working Group on Jobs and Growth, to identify “policies and measures to increase US-EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness.”

¹ See <http://www.bsac.uk.com/membership-list.html> for a list of our Members

The audiovisual sectors in the UK and US benefit from an extremely close, and mutually supportive, relationship. British audiences have always had a strong affinity for American content – as in other European countries, for example, US films account for more than half of UK cinema admissions. But this is far from a one-way relationship: while the audiovisual sector in the UK is much smaller than that in the US, we punch well above our weight. British films and television programmes (including formats) are extremely popular in the US, and in some parts of the sector, such as TV format exports, the UK even outperforms the US in global rankings. This exemplifies the virtuous circle made up of culturally-driven policies, UK domestic success and export success. The mutually supportive relationship between the UK and US works in more subtle and complex ways too (that will not be picked up in top-level trade data). The UK audiovisual sector benefits hugely from inward investment by US companies in general – across multiple sectors including film, TV, video games and digital media – and from long-term investments such as Time Warner’s purchase of the Leavesden Studios. The UK’s attractiveness for inward investment comes from a combination of our high skills base and infrastructure, and from the tax breaks for film, animation, high-end TV and video games. US film and TV production companies benefit from the wealth of British acting and directing talent that is nurtured by British public service broadcasters and independent British films. To give one current example, in three of the biggest US studio superhero franchises, the leading roles are played by British actors (Christian Bale as Batman, Andrew Garfield as Spiderman, and Henry Cavill as Superman).

We must express concern about the DCMS process, on two grounds. First, the request for information was issued on 16 April with a deadline for submissions of 19 April, giving industry participants just three days to formulate their responses. It is impossible for us to address such a complex set of issues in this short period of time. This paper necessarily, therefore, can only provide a partial response to the questions raised, focusing on the overarching policy issues. We, and others in the industry, will require more time to formulate more comprehensive responses.

Second, the questions posed in the request for information are framed predominantly from an offensive perspective – in terms of what US barriers the European audiovisual industry would like to be removed. The audiovisual sector has often played a significant, and at times pivotal, role throughout the long history of trade negotiations: during the multilateral Uruguay Round, disagreements over the treatment of audiovisual services threatened the successful completion of the entire negotiations. More generally, in international trade negotiations, the issues in the audiovisual sector are far more weighted towards protective positions rather than offensive ones, given the need for us to safeguard the measures that underpin European audiovisual policies. This response therefore focuses primarily on these issues, which are more relevant to the sector than the questions that cover the removal of barriers in the US. BSAC will undertake further work to consider in greater depth both the potential opportunities and the risks that might result from the proposed FTA.

The next section of this response summarises the history of BSAC's involvement with the earlier GATS negotiations, and sets out the position that was agreed in the early 2000s. The following section turns to the negotiation position for the audiovisual sector for the proposed EU/US FTA. We briefly discuss the technological and market changes that have occurred over the last decade, their impact on audiovisual policies, and the implications for the audiovisual sector's position with regards the FTA. The final section responds to the request for information on the extent of the audiovisual sector's trading relationship with the US. In the short time available, we have had to draw on available sources that focus on the overall scale of the sector and its international trade performance.

Our key message to DCMS at this stage is to request more time to enable us to undertake further analysis, including potentially a full legal analysis, to underpin a more comprehensive response on behalf of the audiovisual sector. In the meantime, we would strongly urge DCMS not to make any concessions that could jeopardise current or future measures necessary for the EC and its Member States to achieve the cultural and economic objectives of their audiovisual policies.

BSACS's role on behalf of the audiovisual during the GATS negotiations

At the time of the GATS 2000 world trade negotiations, the Trade and Education and Culture Directorates of the European Commission identified a gap in the representations made to them on behalf of the feature film industry. There was no single body that could claim to represent the entire film industry (including production, distribution and exhibition) across Europe that was comparable with the MPA (Motion Picture Association), which provided US trade negotiators with policy advice on behalf of the American film industry.

In 1999, the European Commissioner for Trade, Sir Leon Brittan (as he was then, prior to receiving his peerage), asked BSAC to establish a European Group on behalf of the national film industries to develop a common position and provide advice to the trade negotiators. A "European Feature Film Industry Position Paper on the GATS" was developed by a GATS Steering Group and subsequently endorsed by European film bodies at meetings of the European GATS Group co-hosted by BSAC and Eurocinema in 2001. While this Group primarily included film-related bodies, it was also actively supported by broadcasters and other audiovisual organisations, particularly in the UK, and the scope of the work covered the full range of audiovisual policies, including TV, film and new digital services.

The European position for the feature film industry in the GATS 2000 negotiations was that:

"the negotiating stance of the European Community and its Member States should be to safeguard the measures used for the achievement of the cultural objectives of European audiovisual policies. This includes maintaining the freedom for the Community and its Member States to extend existing measures or to develop new ones as the audiovisual sector evolves."

The position emphasised the principle of technological neutrality. It noted that European audiovisual policies are achieved by a range of measures that encourage the production and distribution of European audiovisual works by whatever means are considered to be most appropriate. Anticipating the impact of digital technologies (“new services”, as they were described then) – and explicitly referencing the development of IP-delivered services, including video-on-demand (VOD) – the position paper argued that, as technological developments change the nature and value of revenue streams for audiovisual rights-owners in highly uncertain ways, policymakers must ensure the flexibility to extend appropriate measures to new forms of content and delivery, or to develop new measures, in order to pursue audiovisual policies effectively in the future.

There followed a debate in 2002-3 between the European and other international film industries, and their respective trade negotiators, about whether the necessary protections for the audiovisual sector should be developed within the WTO framework (by carving out exceptions for the sector) or via a separate instrument – such as a legally-binding treaty or international declaration – on cultural diversity that would be recognised by WTO members. Such an instrument would provide the necessary protection by ensuring that WTO members agreeing to make commitments in the audiovisual sector would not be required to extend MFN (Most Favoured Nation) treatment, market access or national treatment to other members’ audiovisual services if the consequence of so doing would be to endanger cultural diversity. This debate had not been settled by the time the GATS negotiations broke down in Cancún in 2003.

Subsequently, a UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted by the UNESCO General Conference in 2005. This was the first major international convention to be adopted that reaffirms the sovereign right of states to formulate and implement cultural policies. However, while the Convention was approved by a large margin of support, the US was one of the two countries that voted against it (along with Israel).

Proposed principles for negotiations in the EU/US FTA

The European position on the GATS in 2001 was informed by the degree of openness of European audiovisual markets and by the desire to promote cultural diversity. In particular, we noted that:

- The European Union is amongst the most open and free of the major global markets for feature films, as the high levels of international production and the performance of non-European – particularly American – films testify.

- In the UK in particular, markets for audiovisual content – in cinemas, on television and other platforms such as DVDs – are particularly open, as demonstrated by the high market shares for non-UK content.
- The European Union is a heterogeneous grouping of distinct, and in some instances fragile, cultures and languages. The core values of the Union – which are enshrined in its legal framework – include respect for, and promotion of, national and regional cultural diversity and cultural identity.
- The rationale for the audiovisual policies of the European Community and its Member States is to promote cultural diversity. These policies include (but are not limited to):
 - The provision of production subsidies (including co-productions established via various treaties)
 - Transmission or investment quotas for European audiovisual works, works produced by independent producers, and those fulfilling particular cultural or linguistic objectives
 - Public funding, including television licence fees
 - Rules on access to distribution infrastructures, including preferential access or prominence for public service broadcasters.

Measures such as these serve to encourage the production of audiovisual content and its circulation within and between countries, both inside and outside Europe.

In many respects, thanks to the impact of new digital technologies and convergence, the audiovisual sector has changed profoundly in the last decade. To give some examples:

- Few, if any, people at the time anticipated the development and growth of entirely new kinds of devices such as smartphones and tablets, or their impact on the distribution and consumption of audiovisual services
- The fall-off of consumption of physical products such as CDs and DVDs – and their replacement by digital services – has occurred much faster than most industry forecasters predicted
- Since its launch in 2005, YouTube has grown to the point that it now attracts more than 1 billion unique users each month watching 4 billion hours of video
- There was no indication of the ubiquity and central role that would come to be played by services such as Google, Facebook and Twitter in many people's lives.

This does not mean, however, that the negotiating position developed in 2001 is necessarily outdated. While services such as YouTube and Facebook, and devices such as smartphones and tablets, did not exist in 2001, the likely development and transformative impact of new digital services – and in particular IP-delivered video-on-demand services – was explicitly anticipated and reflected in the European position that was endorsed by the European GATS Group.

Moreover, in some other respects, the audiovisual sector has changed to a much smaller degree over the last ten years. For example:

- Consumption patterns for linear TV viewing have remained remarkably resilient, at over four hours per day, despite the development of new services and platforms
- Overall levels of cinema-going are stable (at over 150 million admissions annually) and US studio films continue to account for a higher proportion of the UK box office than films from the UK, Europe and the rest of the world combined
- Despite the development of hundreds of digital TV channels and countless services online offering audiovisual content, investment in many EU Member States including the UK is dominated by a small number of domestic broadcasters, such as public service broadcasters.

Also, while new digital technologies are significantly impacting business models in the audiovisual sector, key elements of the underlying economics of audiovisual markets remain relatively unchanged. Many forms of audiovisual content – such as high-end TV programmes, films and video games – cost many millions, if not tens or even hundreds of millions, of pounds to produce and distribute. With increasing demand for CGI and 3D, costs for some kinds of content have, if anything, risen over the last decade. With such high fixed costs, companies need to be able to exploit economies of scale and scope. Companies in the US benefit from a much larger domestic market than in the UK (it is five times larger, in terms of population), which enables them to achieve the necessary scale economies in their home market and to use their scale to export their content successfully around the world.

The technological and market developments of the kind described above that have occurred over the last decade, and the continuing rapid pace of change in the sector, raise a series of complex issues that merit careful analysis when we come to consider the audiovisual sector in 2013 and the potential implications of liberalisation under the EU-US FTA. It could be argued that digitisation and convergence – characterised by developments such as the transition from analogue to digital TV platforms, digital projection in cinemas, and the growth of internet-delivered services – mean that consumers face far more choice and flexibility than ever before, making audiovisual policies that were developed in an era of scarcity (of spectrum, of choice of services, etc) redundant. Against this, we would argue that there are risks that the digital distribution of audiovisual content is coming to be dominated by large global non-European players who have, historically at least, demonstrated little commitment to investing in new European content, and that this means that there is more need than ever for audiovisual policies to safeguard national and European cultural objectives.

In summary, BSAC's current view is that the core principles that underpinned the earlier GATS negotiating position – in particular the need to safeguard the cultural and economic objectives that underpin national and European audiovisual policies – remain as relevant now as ever, if not more so than before. However, we recognise that we need to undertake further

analysis to assess the potential impact of the EU/US FTA on the interests – both defensive and offensive – of the UK’s audiovisual industries, and to consider whether, and to what extent, BSAC’s position might need to evolve.

The European Parliament’s draft resolution on EU trade and investment negotiations with the US argues that the negotiating mandate “should not risk prejudicing the Union’s cultural and linguistic diversity” (paragraph 10). It is not clear at this stage to what extent this would cover all audiovisual policies. We understand that the EU Trade Commissioner has argued that he intends to distinguish between traditional and new digital audiovisual services, and that liberalisation of digital services should be on the agenda while traditional services would be protected. But this poses a whole set of questions. First of all, it will require clear definitions of new versus traditional services, which will be a difficult if not impossible task at a time when convergence is constantly shifting the boundaries between formerly distinct products, services and markets. And second, this would fundamentally inhibit the ability of any European organisation from adapting to emerging technologies, at a time when it is essential that they are able to participate and innovate effectively in increasingly competitive global markets.

In order to address some of these uncertainties, BSAC is considering commissioning a legal analysis that would look at the impact of the EU/US FTA on the audiovisual sector in detail. At this stage, therefore, we strongly urge DCMS to allow BSAC sufficient time to enable us to undertake this legal analysis, which would enable us to present a more comprehensive and well-informed response on behalf of the audiovisual sector. It would also allow time for further discussions within the industry.

In the meantime, we would strongly urge DCMS not to make any concessions at this time that could jeopardise any of the existing or potential future measures necessary for the EC and its Member States to achieve the cultural and economic objectives of their audiovisual policies.

BSAC responses to individual questions

How extensive is your/your sector’s trading relationship with the US?

Notwithstanding the huge cultural importance of the British audiovisual sector, it is also important to recognise its substantial economic importance too – in terms of its scale and the significant levels of trade with the US and other countries. This success is due not only to films and “finished” TV programmes, but also to the success of British companies in selling TV formats globally.

We present below some high-level statistics relevant to the scale of the UK audiovisual sector and its trade performance. In the limited time available, we have had to draw on available sources presented at BSAC events held in the last year. Further analysis would be needed to

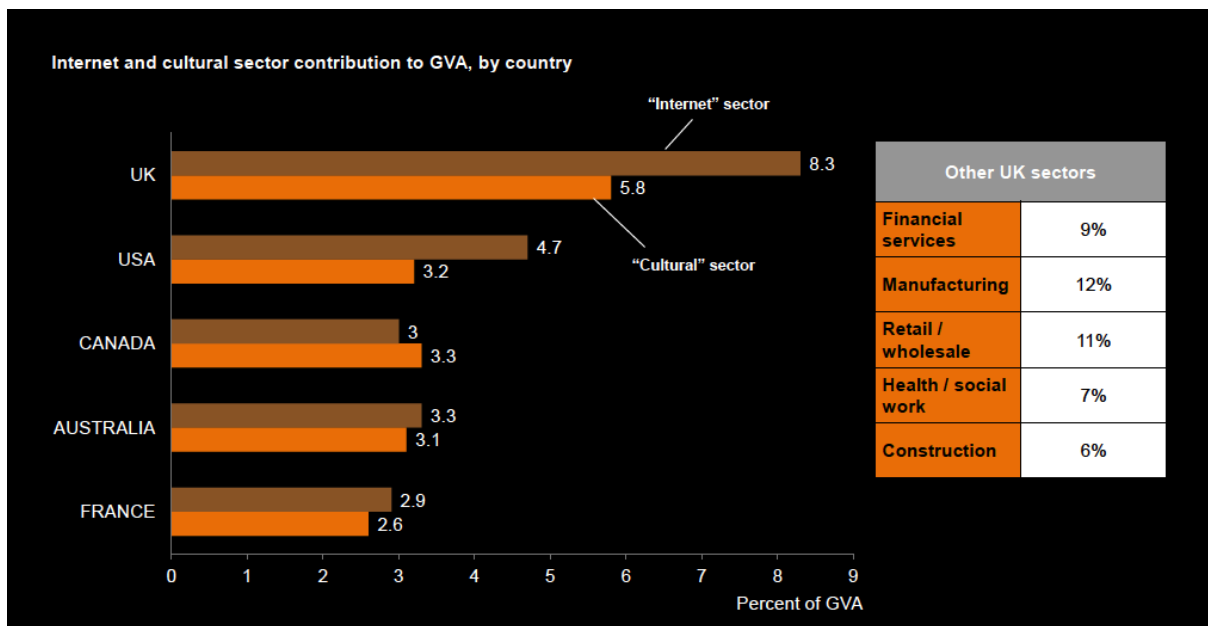
reconcile the varying definitions of creative, cultural and audiovisual services amongst the key data sources that cover multiple territories; and to break the data down further to focus specifically on trade between the UK and the US.

The two key points that we wish to emphasise are:

- The UK’s creative and digital sectors (which include audiovisual) make a substantial contribution to GVA in the UK
- The UK is second only to the US in terms of creative industry exports, and is significantly ahead of other European countries.

The UK’s creative and digital sectors make a substantial contribution to GVA in the UK

It is vital for the UK Government to support the UK creative economy, given the scale of its contribution to national output. The “internet” and “cultural” sectors together represent 14% of UK GVA. This is a greater contribution than other key sectors such as manufacturing and retail/wholesale, and is larger than the corresponding figures in any other OECD nation, including the US.

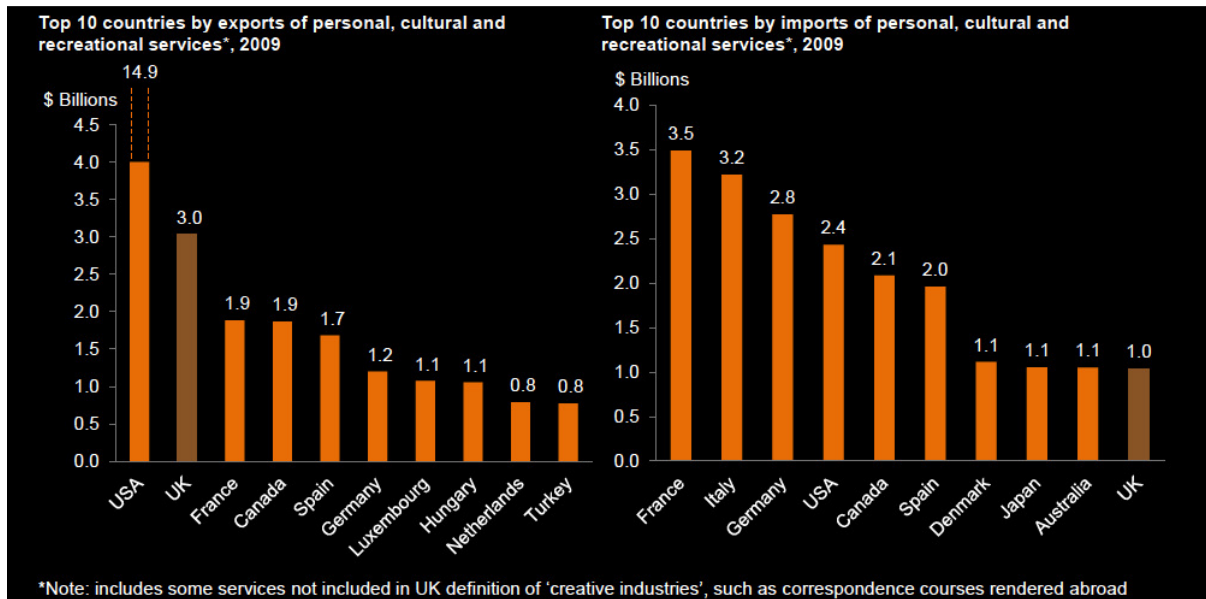


Source: O&O, using data from OECD, BCG

The UK is second only to the US in terms of creative industry exports

According to OECD data, the UK exports more creative (defined here as personal, cultural and recreational) services than any territory other than the US. And it imports far less than its closest competitors, ensuring a healthy positive trade balance. The level of UK exports far

exceeds that of other European countries, demonstrating the importance of UK audiovisual policies in terms of their positive economic as well as cultural impact.



Source: O&O, using data from OECD

In some areas, such as TV formats, the UK even outperforms the US.

Exporting market	Global market share by volume of hours (%)
UK	29
Netherlands	26
USA	26
Australia	4
Argentina	4

Source: O&O

Overall, the UK creative and digital sectors generate a net trade balance of over £30 billion, according to the ONS. By themselves, personal, cultural and recreational services (which include audiovisual) contribute more than £2 billion to the net trade balance.

Service sector (activity band)	Exports	Imports	Net balance
Business and professional services (incl. advertising)	£33.5 Bn	£19.4 Bn	+ £14.1 Bn
Communication services (incl. telecoms)	£5.6 Bn	£4.5 Bn	+ £1.1 Bn
Computer and information services (incl. publishing, business information etc)...	£8.2 Bn	£4.1 Bn	+ £4.1 Bn
Personal, cultural and recreational services (incl. AV services)	£2.9 Bn	£0.7 Bn	+ £2.2 Bn
Royalties and licences (incl. IP licence sales, patent licences, etc...)	£10.9 Bn	£6.8 Bn	+ £4.1 Bn
Technical services (incl. engineering services)	£7.1 Bn	£1.7 Bn	+ £5.4 Bn

Source: O&O, using data from ONS

Other questions

We have not had time to undertake a comprehensive survey of barriers faced by our Members. It is certainly the case that there exist some formal barriers in the US, such as foreign ownership restrictions on TV networks. However, it is not clear to us whether these represent significant restraints in practice. Even when barriers exist, our current view is that the benefits to UK companies of liberalisation in the US are likely to be significantly outweighed by the costs to UK companies of liberalisation in the UK if such liberalisation serves to undermine our audiovisual policies.

Conclusion

Thanks to effective public policies, and competitive and vigorous markets, our audiovisual sector is a source of great pride and value to the UK, providing substantial cultural benefits and significant levels of economic value. BSAC's view is that it is vital to ensure that our audiovisual sector remains as vibrant and successful in the future, and that the UK Government is able to maintain and evolve audiovisual policies as necessary to help achieve this. We urge the DCMS and BIS to continue to work closely with the industry throughout the process of the US-EU free trade agreement to ensure that negotiations do not at any stage risk jeopardising the success of our sector, but rather enable us to continue to evolve and innovate in increasingly competitive global markets.