

## EUROPEAN UNION TRADE AGREEMENT NEGOTIATIONS PROTOCOL FOR CULTURAL COOPERATION

*Memo dated February 13, 2008*

### 1. THE UE-CARIFORUM (19 DECEMBER 2007) ECONOMIC PARTNERSHIP AGREEMENT MODEL

The European Commission has signed a first Economic Partnership Agreement (EPA) with the 15 Caribbean States (Cariforum). This agreement should ultimately supersede the Cotonou agreements whose exception towards the WTO expired at the end of 2007. This agreement should serve as the reference for all other EPA to be concluded with the ACP (Africa, Caribbean and Pacific) countries which benefit from privileged trade relations with the EU, resulting in various degrees of preferential treatment for these countries.

A protocol for cultural co-operation has been included in this EPA in order to implement the 2005 UNESCO Convention on protection and promotion of diversity of cultural expressions by providing for dispositions both horizontal (development of cultural policies, cultural exchanges and dialogue, artists mobility, technical assistance) and by sector (audiovisual and cinema, performing arts, books and heritage) and by building on cultural cooperation principles rather than on trade liberalization.

For the record, we had to intervene last year when the European Commission was drafting this protocol with the Council 133 services Committee which gathers the Member States since, despite all the stated good intentions, the wording of the first documents drafted was very commercial and could be taken as a liberalization in disguise. In agreement with professional organisations and Member States, the model of cultural cooperation protocol has been improved, taking into account the specific needs of developing countries.

### 2. NEGOCIATION OF A FREE TRADE AGREEMENT WITH KOREA

At the same time, the European Commission has launched several negotiations for bilateral Free Trade Agreements (FTA) with a view to liberalize trade, and these are understood to be an alternative to the slowly advancing WTO multilateral negotiations. The EC would like to include in the FTA a protocol for cultural cooperation inspired from the Cariforum EPA. So far, negotiations have been initiated with Korea and India which have well developed cinema and audiovisual industries even though they still benefit from the status of developing countries.

For the professional cultural organizations in Europe and in some other Member States, it is absolutely clear that these countries cannot benefit from conditions of cultural cooperation identical to those granted to truly developing countries such as the ACPs.

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**a) Access to broadcasting quotas for European works in the Television without Frontiers (TVWF) Directive: an essential provision in the cultural cooperation protocol?**

In this context, the most questionable issue in this protocol model for cultural cooperation is the chapter on audiovisual coproduction based on the new disposition of the Audiovisual Media Services Directive (AVMS) which allows the EC to give audiovisual works coproduced with third countries access to the European market by integrating them in the definition of European works benefiting from broadcasting quotas in the TVWF directive.

Indeed, the new AVMS directive includes in its European works definition (article 1 n i) *“works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements”*.

Given the impact of such a disposition on the European market, professional organizations and some Member States consider that this disposition should be applicable exclusively to true developing countries whose limited cinema and audiovisual production does not permit international development. As for Korea and India, this disposition should only be envisaged after an in-depth statistical and economic analysis has been made on its possible impact on broadcasting of European works, taking into account the specific production characteristics of the third country concerned.

**b) What compensation from third countries?**

Moreover, this disposition should not be offered to a third country without compensation. To allow a country whose cinema and audiovisual industry is developed to benefit from the main European cultural policy in the audiovisual sector, with a strong symbolic value, can only be considered within a reciprocity context. This means that the third country must also set up strong cultural policies which could benefit European works.

Evaluating these cultural policies and their effect on broadcasting quotas for European works could however prove difficult to achieve. For example, if Korea was to offer that European works benefit from the screen quotas reserved to Korean films (which have been drastically slashed from 146 to 73 days in 2006), could this offer be considered equivalent to the access of Korean works to European broadcasting quotas (minimum 50%).

**c) Need to specify precise conditions**

This general provision of the AVMS directive can be implemented only under specific conditions (as indeed required by the AVMS directive). So, the provisions allowing coproductions with third countries to be qualified as European works in order to enter quotas must imperatively be clearly defined in each protocol, particularly with regards to which works are concerned, and be adapted to the production characteristics of each third country. Indeed, as is, the disposition of the AVMS directive could apply to any work or program (cinema and television films, series, short films, documentaries, news, entertainment, etc...) likely to be broadcast under the large definition of European works of the “Television without Frontiers” directive.

In the EU/Cariforum Economic Partnership Agreement, only three conditions have been set:

- the production companies shall be owned by a Member State (?) of the EU or of the Cariforum or by nationals from these states;
- the managers of these companies shall have the nationality of a EU Member State or of a Cariforum State;

- the financial contributions of the production companies of each zone shall not be less than 20% and not more than 80% of the total production cost.

### **3. THE EUROPEAN COMMISSION STRATEGY**

At the occasion of a recent meeting on January 29<sup>th</sup> with M. Julien Guerrier, Deputy Head of Unit for services in DG Trade of the European Commission, M. Guerrier tried to be reassuring by announcing that a meeting will be held on February 19<sup>th</sup> to present the European Union strategy on Free Trade Agreements and on the cultural cooperation protocol, thus proving the EC's will for transparency and for associating the civil society.

As to the question whether this provision giving access to European quotas should be part of the basic provisions of all cultural cooperation protocols offered, or reserved to some third countries after in-depth analysis or as a reward of a privileged cultural relationship, the European Commission considers that this provision, at least on the principle, should be part of the basic provisions of the future free trade agreements, particularly with Korea and India, because these two countries are awaiting proposals from the UE. These two countries have made specific requests for audiovisual services liberalization to the EU within the WTO framework and are expecting substantial provisions in a FTA.

Moreover, and equally worrying, Julien Guerrier stated that he was very much in need of analysis and remarks from professionals regarding what conditions would be needed to implement the provision of the AVMS directive, which leads to expect that the EC has not made much research itself (and does not intend to do so) and is far from intending to launch a preliminary impact study.