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REPORT

# The French Audiovisual Policy: Impact and Compatibility with Trade Negotiations

**Emmanuel Cocq**

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# The French Audiovisual Policy: Impact and Compatibility with Trade Negotiations

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CONTENT

**Introduction**

Economic analysis justifies trade liberalization by the gains accruing to the country undertaking such a policy. It never supports liberalization by obligations imposed by the rest of the world. The only value of international commitments is to help and to confort governments willing to improve people's welfare and to fight against vested interests which are strong all the more because they are protected from foreign competitors.

The basic logic of economic theory would lead us to start our analysis by examining the benefits that France could gain by forcing its audio-visual policy to pay closer attention to competition and market forces. Instead, this paper will begin with an analysis of the impact of the GATT and the Uruguay Round Agreements on the French Audio-visual Policy (FAP). The main reason for this approach is to address France's widely held belief that the current international environment is detrimental to French interests. In fact, the first section of this paper will examine how the FAP is not currently constrained by international trade obligations, whether they be those of the European Community (EC) or of the WTO. It will demonstrate how the FAP itself is the cause of the additional costs withstood by audio-visual producers as well as French consumers of audio-visual goods.

As subsidies represent the most important instrument used by the FAP, the second section of this paper will examine the adverse and perverse effects of French audio-visual subsidies on the French film industry. The last section will then be devoted to a reflection on what the French position during the Doha Round ought to be. It will argue that multilateral trade negotiations could be very helpful in undertaking and supporting an evolution of the current FAP into a really « cultural » audio-visual policy. This last section will stress, once again, the importance of a domestic reform of the FAP.

**1. The French Audio-Visual Policy (FAP) and the current trade regime**

France is probably the EC Member state with the deepest misunderstanding of what mean the multilateral commitments undertaken since the GATT (1947) and particularly during the Uruguay Round (1986-1995). The many failures of the FAP are often attributed to this international legal environment. Supporters of French culture fail to perceive the benefits they could gain from the exposure of French film and audio-visual policy (FAP) to WTO disciplines. When coming from the vested interests associated to the FAP, such reactions are easy to understand. But it is unfortunate that genuine interests in generating a really cultural policy who recognize the limits of the current FAP fail to grasp the benefits that they could derive from progressive liberalization.

<u>1.1 France: an EC Member state</u>

France often forgets the implications of its membership in the European Community. The European Directive "Television without Frontiers" (TWF) was largely drafted at French insistence, and is largely in line with the main aspects of the FAP (in particular, with its quota and subsidy systems). As a result, France tends to believe that it represents the European interests. Though this approach receives some support in certain European quarters, it is far to be the case, and French negotiators should be conscious that France is unlikely to be at the barycenter of the European position during the coming decade. As will be shown in section 3, this realisation should lead French negotiators either to adopt a less extreme position, or to be ready to make concessions to other member states in one of France's other areas of interest.

That France is currently at one extreme of the European spectrum can be illustrated by the use of the "when available" provision of the TWF Directive. The use of this provision by most EC Member states is relatively frequent. It can also be illustrated by a systematic and detailed analysis of the domestic regulations in various member states. Cocq and Kohler [2003] have shown that French regulations tend to be much more protectionist than the "average" European regulation.

Even more important is the fact that one of the main goal of the TWF Directive is cross-border trade of audio-visual programs (cross-border broadcasting). This objective is similar to the WTO broad objective—hence it raises the fundamental question of whether it would be possible for France to oppose the latter, while pushing for the former. However, the Directive ultimate goal is far from being achieved. "Pan-european" TV channels are few and marginal. They represent less than 12% of the total number of channels in Europe, less than 2% of TV advertising resources, and less than 0.7% of total revenues raised by European broadcasters. Today, almost all the European TV channels which want to provide services in other Member states operate through subsidiaries in these countries, and they follow the laws and regulations of the host country—not of the country of origin.

This situation is increasingly at odd with the general trend seen in other European services, which is to develop cross-border services under the regulations of the country of origin. Moreover, it generates costly and unstable market structures because, in order to inhibit the emergence of cross-border services, European broadcasters make alliances between themselves. These alliances are defensive in nature, and work as "pacts of non-aggression" between members. Digital technology will substantially decrease the cost of broadcasting in the next few years and will make it cheaper and more attractive for new entrants to implement the cross-border provisions of the TWF Directive, as has occurred in the 1980s in the radio sector. This technological evolution will make it impossible for France to impose her current views on the rest of Europe and therefore to pursue her current audio-visual policy.

### 1.2 The FAP and the GATT (1947)

Commitments undertaken by France in the 1947 GATT context have had almost no impact on the FAP. What follows analyzes only the specific issues of interest to France. Zampetti's article [included in this volume] addressed the same issue from a more general perspective.

In 1947, France was one of the countries who insisted on introducing GATT Article IV "special provisions to cinematograph films." This Article allows France and other GATT members to impose "screen" quotas under the form of time limits for showing foreign films (in fact US movies) in French cinemas. In fact, Article IV was providing a multilateral legal basis for the US-French Blum-Byrnes Agreement signed in 1946, which established such screen quotas. As Article IV language clearly foresees only one evolution—liberalization through the progressive relaxation of the screen quotas—it seems quite unplausible that it could be invoked by France in the future without leading to a WTO dispute settlement, probably ending with French compensations to be paid to US film producers.

There are two other FAP instruments in the cinema sector which can be of interest in the GATT framework. The first one is the "special seat tax" (TSA) of 11% raised on every cinema ticket sold. This tax is non-discriminatory: it is paid for watching French and foreign films. Consequently, it does not run against the two main GATT principles of the "most-favored-nation" (since all foreign films are subjected to the same seat tax) and of "national treatment" (since French films are also subjected to the tax). In fact, the 1997 agreement closing the dispute opposing Turkey and the US on the Turkish seat tax ended up with the adoption by Turkey of a tax identical to the French special seat tax (WTO, *Turkey - Taxation of Foreign Film Revenues*, WT/DS43/2) underlining the GATT-consistency of the French system.

The other main FAP instruments in the cinema sector are the "exploitation subsidies" and a reduced VAT tax rate. Both instruments seem also in accordance with basic GATT law because again they are granted in a non-discriminatory way—independently of the nationality of the movies shown. One could probably argue that a disproportionate share of these subsidies is granted to certain kinds of cinemas, namely those showing films of "art and essays" which might be more often from French than from foreign origin. However, it is unlikely that complainants could get noticeable net benefits from launching a dispute settlement case at the WTO because the subsidy element is likely to be very small, and because the costs of bringing such a legal dispute are high.

### 1.3 The FAP and the GATS (1994): a "cultural exception?"

One of the key innovations of the Uruguay Round signed in 1994 and enforced since 1995 is to have opened the task of liberalizing trade in services, with the signature of the General Agreement Trade in Services (GATS) and the adoption by WTO members of schedules of commitments in services (for more details, see Zampetti, this book). However, the FAP has been left untouched by these new developments.

Before showing this important point, it is important to underline that, contrary to a wide belief in Europe and in France, there is no such thing as a "cultural exception" in the current GATS context. When signing the Uruguay GATS Agreement in 1994, the EC and France have agreed to be subjected to the "general" obligations and disciplines as of January 1, 1995. General provisions consist in Articles I to XV (this last Article being particularly important because it lays down the disciplines on subsidies, a key FAP instrument, as examined below in more detail).

The erroneous impression of a “cultural exception” came from the fact that the Annex to Article II allows WTO members to exempt some services from these basic general`disciplines for a period of ten years. As shown in Table 1, the EC has invoked this clause not only for the audiovisual sector—but also for some other services, such as water, road and air transport, press agrencies, non-life insurance and financial services. More importantly, this special provision is scheduled to lapse on January 1, 2005, despite a carefully ambiguous language (such as the use of the word “indefinite” in the EC schedule of commitments). One could imagine that the Doha negotiations will extend the life of the Article II Annex. But that does not seem likely—there are already three key WTO members (Brazil, the US ans Switzerland) which have tabled proposals for negotiating—or getting this situation would require a high price to be paid by France in terms of lost deals in other sectors.

These general comments require three remarks. First is that, paradoxically, the only GATS Article which could already raise questions about the FAP is Article XV devoted to subsidies because it pertains to the GATS general disciplines to which the EC and France have to abide. However, Table 1 shows that subsidies have been dealt with in the Annex of Article II. As a result, the problem will be raised, possibly as soon as in January 2005.

***Table 1. Summary of specific commitments in audiovisual services under the Uruguay Round***

| Countries | Film & Video production & distribution CPC: 96112, 3 | Film projection services CPC: 96121, 2 | Radio & TV services CPC: 96131, 2, 3 | Radio & TV transmission services CPC: 75241, 2 | Sound recording CPC: | Other CPC: 96114 | Total |
|---|---|---|---|---|---|---|---|
| Large producers (by decreasing number of films produced) | | | | | | | |
| India | X | | | | | | 1 |
| USA | X | X | X | X | X | X | 6 |
| Hong Kong | X | | | | X | X | 3 |
| Japan | X | X | | | X | | 3 |
| Smaller producers | | | | | | | |
| Central African Rep. | X | X | X | X | X | X | 6 |
| Dominican Rep. | | | | X | | X | 2 |
| El Salvador | | | | X | | X | 2 |
| Gambia | X | X | X | X | | | 4 |
| Israel | X | | | | | | 1 |
| Kenya | X | X | | | | | 2 |
| Korea | X | | | | X | | 2 |
| Lesotho | X | X | X | X | | | 4 |
| Malaysia | X | | | X | | | 2 |
| Mexico | X | X | | | | | 2 |
| New Zealand | X | X | X | X | | X | 5 |
| Nicaragua | X | X | | | | | 2 |
| Panama | X | X | X | | X | | 4 |
| Singapore | X | | | | X | | 2 |
| Thailand | X | | X | | | | 2 |
| Total | 17 | 10 | 7 | 8 | 7 | 6 | 55 |

Source: WTO, Audiovisual services, Table 9, S/C/W/40, 1998.
Note: CPC=Central Product Classification.

Second, as underlined by Zampetti [this book], the line between what constitutes an audiovisual good and an audiovisual service has been left largely unclear by the GATS text and by the schedules of commitments. This is a fundamental point because the existing level of protection is relatively small for audiovisual goods, but very high and often prohibitive for audiovisual services. Classifying the downloading of a movie as a good or as a service will thus make a huge difference.

Lastly, there is the issue of the general disciplines on regional agreements (Article V). Such agreements are acceptable in the GATS context if they fulfill some criteria (a wide sectoral coverage, a short transition period for being fully implemented, and the non-introduction of new barriers with respect to the non-members of the regional agreement). The two first conditions are respected by the "Single Market" launched in 1985. The last one is not fulfilled since the TWF Directive has expanded the quotas and subsidies from France to all Member states. However, it is likely that this situation will not raise serious problems because of the absence of European specific commitments in the WTO at the time of the adoption of the Directive. By contrast, the regional agreements signed in the context of the Council of Europe which have been instrumental in expanding the EC audiovisual policy to non-EC countries do not seem to fulfill any of the htree conditions of GATS Article V.

### 1.4 The FAP and the GATS (1994): market access

The EC and France have taken no "specific" liberalization commitment about market access issues (GATS Article XVI and XVII) under the Uruguay Round. It is interesting to note (see Table 2) that a few large producers of films and audiovisual works (Hong Kong, India, Japan, and the US) have already taken such commitments—hence exposing their film industry to foreign competition, and thus enhancing their capacity to compete on a global basis.

GATS Article XVI focuses on all types of quotas which could impede market access of foreign firms. Table 3 summarizes the main quotas currently enforced under the FAP. All these quotas are currently perfectly acceptable under the current Uruguay Round since the EC and France have taken no specific commitment in audiovisual under Article XVI.

There are more potential quotas in the FAP than those mentioned in Table 3. There are the relatively opaque procedures for granting radio and broadcasting licenses. There are also the opaque rules and limits imposed on the participation of foreign capital in domestic firms covered by Article XVI(f). The recent debacle of Vivendi-Universal has shown the firm opposition of two French governments (a socialist and a conservative) to let foreign firms enter substantially into the French audiovisual sector.

## *Table 2. GATS Commitments by Country*

### European Community: MFN Exemptions

| Sector or subsector | Description of measure indicating its inconsistency with Article II | Countries to which the measure applies | Intended duration | Conditions creating the need for the exemption |
|---|---|---|---|---|
| Audiovisual services<br>- Distribution of audiovisual works | Redressive duties which may be imposed in order to respond to unfair pricing practices, by certain third countries distributors of audiovisual works. | All Members | Indefinite | Unfair pricing practices may cause serious disruption to the distribution of European works |
| Audiovisual services | Measures taken to prevent, correct or counterbalance adverse, unfair or unreasonable conditions or actions affecting EC audiovisual services, products or service providers, in response to corresponding or comparable actions taken by other Members. | All Members | Indefinite<br>The need for exemption will lapse together with corresponding exemption from other Members | Need to protect the European Communities and their Member States from adverse, unfair or unreasonable unilateral actions from other Members |
| Audiovisual Services<br>- Production and distribution of audiovisual works through broadcasting or other forms of transmission to the public. | Measures which define works of European origin, in such a way as to extend national treatment to audiovisual works which meet certain linguistic and origin criteria regarding access to broadcasting or similar forms of transmission. | Parties to the Council of Europe Convention on Transfrontier Television or other European countries with whom an agreement may be concluded. | Indefinite.<br>Exemption needed, for certain countries, only until an economic integration agreement is concluded or completed. | The measures aim, within the sector, to promote cultural values both within EC Member States and with other countries in Europe, as well as achieving linguistic policy objectives |
| Audiovisual Services<br>- Production and distribution of cinematographic works and television programmes | Measures based upon government-to-government framework agreements, and plurilateral agreements, on coproduction of audiovisual works, which confer National Treatment to audiovisual works covered by these agreements, in particular in relation to distribution and access to funding. | All countries with whom cultural cooperation may be desirable (agreements already exist, or are being negotiated, with the following countries: Algeria, Angola, Argentina, Australia, Brazil, Burkina Faso, Canada, Cape Verde, Chile, ivory Coast, Colombia, Cuba, Egypt, Guinea Bissau, India, Israel, Mali, Mexico, Morocco, Mozambique, New Zealand, São Tomé e Principe, Senegal, States in Central, Eastern and South- Eastern Europe, Switzerland,Tunisia, Turkey, Venezuela). | Indefinite | The aim of these agreements is to promote cultural links between the countries concerned |
| Audiovisual Services<br>- Production and distribution of television programmes and cinematographic works | Measures granting the benefit of any support programmes (such as Action Plan for Advanced Television Services, MEDIA or EURIMAGES) to audiovisual works, and suppliers of such works, meeting certain European origin criteria | European countries | Indefinite.<br>Exemption needed, for certain countries, only until an economic integration agreement is concluded or completed. | These programmes aim at preserving and promoting the regional identity of countries within Europe which have long- standing cultural links |
| Audiovisual - Distribution services | Waiver of the requirement in Spain to obtain licences for the distribution of dubbed films of non-Community origin, granted to films of European origin which are especially recommended for children's audiences. | Parties to the Council of Europe | Indefinite.<br>Exemption needed for certain countries, until an economic integration agreement is concluded or completed. | The measure aims at promoting European cultural values and linguistic policy objectives toward the youth. |
| Audiovisual services:<br>television and radio broadcasting services | Foreign participation in companies in Italy exceeding 49% of the capital and voting rights, subject to a condition of reciprocity. | All countries | Indefinite | Need to ensure effective market access and equivalent treatment for Italian service suppliers |
| Audiovisual services:<br>production and distribution of cinematographic works and television programmes in Nordic countries | Measures taken in Denmark that are adopted for the implementation of benefits in conformity with such support programmes as the NORDIC FILM and TV FUND in order to enhance production and distribution of audiovisual works produced in Nordic countries. | Finland, Norway, Sweden, Iceland | Indefinite | Preservation and promotion of the regional identity of the countries concerned |

***Table 3. The main quotas imposed on French audiovisual firms***

| Instrument | Free air TV-channels | Canal Plus |
|---|---|---|
| | **Broadcast quotas on films** | |
| Maximum number of films to be broadcast during one year | 192 films, with a maximum of 144 films between 20:30 and 22:00; possibility of 52 additional films of "art et essai" (excluding between 20:30 and 22:30). | 500 films, with a maximum number determined by convention |
| Days and hours prohibited | Wednesday and Friday evenings (except "art et essai" after 22:30); Saturdays; Sundays before 20:30. | Wednesdays from 13:00 to 21:00; Fridays from 18:00 to 21:00; Saturdays from 18:00 to 23:00; and Sundays from 13:00 to 18:00. |
| Distribution schedules after film exhibition in a movie theater | 36 months, reduced to 24 months if the broadcaster is co-producing the movie. | 12 months. |
| | **Quotas by nationality** | |
| Broadcasting quotas for films | At least 60 percent of all the broadcast movies must be European, and 40 percent must be French (EOF); these quotas are valid for the peak hours (20:30 to 22:30). | At least 60 percent of all the broadcast movies must be European, and 40 percent must be French (EOF); these quotas are valid for the peak hours (20:30 to 22:30). |
| Investment quotas in film production | 3.2 percent of the turnover of the previous fiscal exercise must be invested in the production of European films, with at least 2.5 percent must be invested in the production of French (EOF) films. | 20 percent of the resources of the previous fiscal exercise must be invested in the film production, with at least 12 percent for the production of European films, and 9 percent for the production of French (EOF) films. |
| Broadcasting quotas for audiovisual works | At least 120 hours of European or French (EOF) works to begin to be broadcast before 20:00 and 21:00; at least 60 percent of the broadcast movies must be European, and at least 40 percent must be French (EOF); these quotas are valid for the peak hours (Wednesdays from 14:00 to 18:00 and the other days from 18:00 to 23:00). | At least 60 percent of the broadcast audiovisual works must be European, and at least 40 percent must be EOF; these quotas are valid for the peak hours (20:30 to 22:30). |
| Investment quotas in the production of audiovisual works (fictions, documentaries, shows, etc.) | 16 percent of the turnover of the previous fiscal exercise must be invested in the production of French (EOF) works. | 4.5 percent of the resources of the previous fiscal exercise must be invested in the production of French (EOF) works. |

Note: EOF: expression originale francaise.

1.5 The FAP and the other agreements of the Uruguay Round (1994)

The Uruguay Round is not limited to the GATT and GATS texts. Three other agreements offer some interesting issues in the French case.

First, the agreement on investments (TRIMs) includes a general ban on local content measures. Such measures are frequent in the FAP. In particular, the nationality of a movie relies on a set of criteria which are all defined in terms of local content. A film is considered as French once it has been agreed (*agréé*) by the *Centre National de la Cinématographie* (CNC), a procedure which makes the film eligible for receiving French subsidies. The CNC agreement procedure requires that a minimum number of points should be collected by a film for being granted the French nationality. These points are determined by the hiring of French actors or workers, by the use of the French language in the film and during its making, etc. Moreover, the CNC agreement cannot be granted to films produced by firms «established outside Europe» a discriminatory provision targeting US film firms, but also hurting firms from countries with which France has not signed bilateral agreement in audiovisuals, such as Hong Kong, Japan or Taiwan. It is worth to note that the CNC agreement procedure has been the subject of very criticial investigations by the *Cour des Comptes* which has shown how deeply it can be distorted on an *ad hoc* basis in order to grant French nationality to films (such as "The Fifth Element") fulfilling only marginally the set of criteria [Cour des Comptes, Rapport au Président de la République, 1993, p.106]. This observation helps to understand the potential benefits to be gained by exposing the current FAP to foreign scrutiny.

The second Uruguay Agreement of prime importance for French audiovisuals is the one devoted to intellectual property rights (TRIPs), more especially its provisions about copyrights for authors, and the extended rights to actors, singers, etc. A first conflict has already been raised in the context of the WTO Dispute Settlement Mechanism about musical rights between the US and the EC. More in this domain should be expected because there are profound differences between the concepts of property rights in the US and in the EC, and between their related procedures to enforce these rights. However, the copyright issue should not hide the crucial role of patents on audiovisual equipment which is undergoing profound technological changes.

Last but not least, the current absence of a clear definition of what constitutes a good or a service could lead to the use of the instruments of contingent protection—in particular, antidumping and antisubvention—in the audiovisual sector.

## 2. The French subsidies policy: an assessment

2.1 Overview

The previous section has shown that subsidies may become a source of international difficulties for the FAP, and the following section will show that French negotiators should focus their attention on this issue—using WTO negotiations as a help for reforming the FAP. This section shows the many perverse effects of the current subsidy FAP regime.

Table 4 shows that the issue is more important for France than for any other EC Member states. Based on relatively recent and consistent data gathered by the European Audiovisual Observatory [1998], it allows to compare the magnitude of French direct public subsidies with those of the other EC Member states. It provides for each EC Member state an estimate of the subsidization rate defined as the ratio of subsidies to the turnover of the domestic industry. (In order to get subsidization rates based on value added could be guessestimated by multiplying by two the rates of subsidization given by Table 4). As one could expect, the highest and smallest rates are found in small countries which have chosen either non-intervention (Northern Europe) or public intervention spread over a very limited (by the sheer size of the market, as best illustrated by Belgium which is divided in Dutch- and French-speaking regions) number of movies. In this context, France shows the highest amount of public subsidies, but average rates of subsidy. But, the last feature flows from the fact that indirect subsidies (granted through the TV channels) are not taken into consideration, although they are mandatory. Including these subsidies would increase by a very large proportion the French rates of subsidy.

***Table 4. Use of subsidies and subsidization rates in EC audiovisuals, 1995***

| | Subsidies | | Subsidies to production [b] | | | Sub. Prod. | Subsidization rates | |
|---|---|---|---|---|---|---|---|---|
| | Total | Non prod. | Total | Selective | Automatic | films only | estim.1 | estim.2 |
| | Mio.ECU | % [a] | Mio.ECU | % | % | Mio.ECU | % [c] | % [c] |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Austria | 21,9 | -- | -- | -- | -- | -- | -- | -- |
| Belgium | 23,8 | 44,0 | 13,3 | 71,7 | 28,4 | 11,1 | 1078,3 | 1078,3 |
| Britain | 31,0 | 9,3 | 28,1 | 100,0 | 0,0 | 9,2 | 8,8 | 8,8 |
| Denmark | 26,1 | 32,5 | 17,6 | 83,4 | 16,6 | 17,6 | 142,5 | 147,7 |
| Finland | 11,5 | 34,4 | 7,5 | 100,0 | 0,0 | 5,9 | 282,1 | 299,9 |
| France | 371,6 | 49,9 | 186,3 | 29,5 | 70,5 | 61,1 | 22,8 | 47,5 |
| Germany | 147,2 | 50,1 | 73,5 | 90,1 | 9,9 | 36,5 | 28,1 | 42,6 |
| Greece | 5,2 | 8,9 | 4,7 | 100,0 | 0,0 | 4,7 | 239,3 | 239,3 |
| Ireland | 3,8 | 0,0 | 3,8 | 100,0 | 0,0 | 3,6 | 390,0 | 390,0 |
| Italy | 95,5 | 4,3 | 91,3 | 92,0 | 8,0 | 91,3 | 70,6 | 71,3 |
| Luxembourg | 1,5 | 31,8 | 1,0 | 100,0 | 0,0 | 0,4 | 1818,2 | 1818,2 |
| Netherlands | 34,6 | 16,3 | 29,0 | 100,0 | 0,0 | 6,0 | 167,1 | 174,6 |
| Portugal | 11,6 | 50,5 | 5,7 | 68,4 | 31,6 | 5,5 | 652,7 | 695,3 |
| Spain | 27,3 | 21,2 | 21,5 | 51,8 | 48,2 | 17,7 | 38,2 | 42,3 |
| Sweden | 25,7 | 40,8 | 15,2 | 75,0 | 25,0 | 15,2 | 77,8 | 81,6 |
| EC-15 | 838,1 | 37,9 | 498,6 | 66,2 | 33,8 | 285,8 | 39,7 | 52,2 |

Source: European Audiovisual Observatory, 1998, 1999. Authors‘ computations.

Notes: [a] % of subsidies not directly to production of films or TV works. [b] films and TV works. [c] see text.

The CNC, created in 1946, quickly established itself as the administrator of the French film policy, and since 1986, as the manager of French audio-visual works as well. The CNC was founded to restructure a precarious French film sector after the war time ban on American movies was lifted. After ten years of active interventionism in the film market (under such laws as those of 1948 and 1953), the film industry seemed more robust. The government then developed, alongside existing economic aid, an aid policy that was more qualitative in nature. Whereas the first set of production incentives were meant for an industry in peril, the second approach focused on the cultural dimension of the French film industry. In 1959, the Ministry of Culture took control of the CNC and reworked the structure of the economic aid to the film industry into its current form: aid became available through the Advance on Receipts system, the state's Support Fund, as well as the seat tax. This brief historical background shows that the French film policy is an unstable and complex compromise between industrial and cultural interests.

Nowadays, the 1989 "Plan Lang"[1] for cinema remains at the heart of the French film policy. Indeed, the Plan Lang aimed at three major objectives: (1) *"Government support will only benefit French films that were originally shot in the French language. The defence of the French language is a major cultural issue. These French movies should not be targeted at French audiences only, but should also appeal to foreign audiences";* (2) Renewal and strengthening of relationships with foreign partners, as well as an increased distribution of French films abroad; (3) The encouragement of the production of French films with broader mass appeal. A specific support system will be put in place to favour the production of more ambitious films. Indeed, Chapter 2 of the Plan indicates that *"the production of ambitious French films, both in the scope of their subject matter and the beauty of their images, is considered a way to win back French audiences"*. These objectives show that Plan Lang's goals were to preserve French culture's independence, unity and prestige.

Plan Lang had another major goal, however: a desire to widen cultural diversity. As such, Plan Lang corroborates discretionary aid programs (Advance on Receipts): (1) *"Favouring the production of different, independent and audacious feature films";* (2) *Encouraging the production of new directors' first films as a way of renewing artistic creation "*

The previous paragraph has summarised the goals that set the tone of the French cinema policy. What follows will try to appraise the coherence of this policy by assessing its ability to attain the targets it has set in terms of film quality and film diversity.

## 2.2 The structure of the French subsidy system

The structure and financing of the Support Fund changed dramatically in the 1980s. The Finance Act of 1986 introduced a turnover tax to be paid by broadcasters (on the basis of a 4.5 % rate in 1986 and 5.5 % since 1987). This change allowed a fourfold increase of Support Fund revenues (in current euros) during the 1985 to 2001 period. However, this evolution provided only marginal benefits to the Cinema Section. While the Cinema Sector's Support Fund revenues doubled from 1986 to 2001, the revenues of the Audio-visual Section, which was created in 1986, increased fourfold. In 2001, the Cinema Section gained only 36 % of revenues derived from the TV channels' taxation. Nevertheless, this contribution of broadcasters represents a rise of the Cinema section's revenues equivalent, in 2001, to a 122% increase of the TSA.

The growing importance of broadcasters, as well as the decline of revenues derived from the

TSA, give TV channels a central position in the financing of the French film policy. In 2001, TV channels financed 52% of the Cinema Section whereas the TSA only financed 26%. Television broadcasters have therefore become the main source of government intervention in the film industry.

***Table 5 : The Support Fund revenues***

| In M€, current prices | **1985** | **1986** | **1990** | **1995** | **1996** | **1997** | **1998** | **1999** | **2000** | **2001** |
|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | |
| **1. Section 1 : Cinema** | | | | | | | | | | |
| Tax on cinema tickets (TSA) | 80,8 | 75,6 | 64,1 | 76,0 | 76,5 | 76,5 | 79,0 | 93,3 | 96,6 | 96,7 |
| Television Tax | 8,4 | 20,7 | 60,2 | 81,3 | 89,5 | 98,2 | 104,8 | 96,6 | 103,7 | 118,0 |
| Video Tax | 0 | 0 | 0 | 10,7 | 10,4 | 11,7 | 12,0 | 13,0 | 11,7 | 10,4 |
| Public funds | 16,6 | 17,2 | 0 | 1,5 | 1,5 | 0 | 0 | 0 | 0 | 0 |
| Others | 0,6 | 0,9 | 2,5 | 2,5 | 0,3 | 0,8 | 0,8 | 2,0 | 2,0 | 2,0 |
| **Total 1** | **106,4** | **114,5** | **126,8** | **172,0** | **178,1** | **187,1** | **196,6** | **204,8** | **214,0** | **227,0** |
| **2. Section 2 : Audiovisual** | | | | | | | | | | |
| Television Tax | 0 | 40,2 | 80,3 | 132,6 | 146,2 | 160,1 | 171,1 | 171,7 | 184,4 | 209,8 |
| Others | 0 | 0,2 | 15,4 | 2,6 | 4,3 | 2,1 | 2,1 | 2,3 | 2,1 | 1,8 |
| **Total 2** | **0** | **40,4** | **95,7** | **135,3** | **150,5** | **162,1** | **173,2** | **174,0** | **186,4** | **211,6** |
| **Total** | **106,4** | **154,9** | **222,6** | **307,2** | **328,6** | **349,3** | **369,8** | **378,8** | **400,5** | **438,6** |

Source : CNC.

French subsidies to the film industry can be disbursed in two different ways. The first system, called the automatic aid program, consists of a percentage of the total receipts (on all types of media such as Theatre, TV, video). The second system consists of the discretionary aid programs. In this case, aid is given on the basis of artistic content and the degree to which a film, a distributor or an exhibitor fulfill a set of specific criteria. Panels of professionals are responsible for distributing these grants. The table 6 illustrates the importance of the Advance on Receipts aid as opposed to other forms of discretionary support.

***Table 6 : Subsidy program repartition.***

| | **1985** | **1995** | **1997** | **1999** | **2000** | **2001** |
|---|---|---|---|---|---|---|
| Cinema Support Fund Revenues (in M€) | 106,4 | 172 | 187,1 | 204,8 | 214 | 227 |
| Automatic aid Production/ distribution | 35,1% | 40,26% | 38,6% | 36% | 37,5% | 36,2% |
| Automatic aid Exhibition | 32% | 26,6% | 25,6% | 26,34% | 25,7% | 25,6% |
| **Total** | 67,1% | 66,86% | 64,2% | 62,34% | 63,2% | 61,8% |
| Advance on Receipts | 12,8% | 10,2% | 11,8% | 10,8% | 10,4% | 9,7% |
| Other discretionary aids | 16,6% | 19,5% | 20% | 20,6% | 20,2% | 22,7% |
| **Total** | 29,4% | 29,7% | 31,8% | 31,4% | 30,6% | 32,4% |
| Management Costs | 3,5% | 3,4% | 4% | 6,3% | 6,2% | 5,8% |

Source: CNC.

This data shows the predominance of aid coming from the automatic support system. Over the 1985-2001 period, this support system represents more than 60% of total aid granted. It must also be noted that, as a result of a sector-based strategy, production stands out as the main beneficiary, as it

[1] Named after the former minister of culture, Jack Lang.

receives approximately 50% of the Cinema Support Fund revenues. Such a prominence justifies a closer look at the aid programmes targeted at feature film production.[2]

## 2.3 Assessing the automatic support for production

The Automatic Support Programme's objective is to guarantee market share for domestic production. The Plan Lang of 1989, however, underlined the need for an evolution of this system. From then on, automatic aid was meant not only to preserve high-levels of production, but also to subsidise large-budget films in order to attract domestic audiences. This evolution of the programme's objectives brought about the following changes: (1) A standardisation[3] of the automatic support rates based on box-office achievements, as opposed to the original system which was based on a decreasing rate and penalized successful movies and the production of costly films. (2) The automatic aid granted to distributors took into account advertising expenses as well as film editing, and therefore, primarily helped high-budget productions that require large-scale editing.

Automatic aid was necessary in the 1960s and 1970s. It stabilized the market while assessing the economic legitimacy of certain cinematographic projects. However, the efficiency of this programme decreased in the 1980's. At that point, the amount of aid granted seemed far too modest to cope with the soaring costs of production. If, in the 1950s, the programme financed up to 15 to 20 % of film projects, this rate plummeted to 9,1 % in 2001. This phenomenon illustrates the changes in the financing of the French cinema, as funds gravitated less towards movie theatres and more towards the television set (see table 7).

***Table 7 : Financing of French-initiative films***

| | French producers | Sofica | Automatic support | Selective support | Broadcasters | French distributors | Foreign Investment | Total |
|---|---|---|---|---|---|---|---|---|
| 1986 | 42.2% | 4.8% | 6.5% | 5.2% | 11.7% | 18.8% | 10.8% | 100% |
| 1990 | 42% | 6.7% | 7.6% | 5.4% | 19.8% | 3.2% | 15.3% | 100% |
| 1995 | 26.6% | 5.6% | 8.7% | 5.7% | 36.9% | 4.2% | 12.3% | 100% |
| 2000 | 29% | 5.7% | 9.6% | 3.6% | 40.2% | 5.5% | 6.5% | 100% |
| 2001 | 34.6% | 3.3% | 9.1% | 3.2% | 35.7% | 6% | 8.2% | 100% |

Source: CNC.

Finally, the scattering of the automatic support suffered from a series of structural disparities. Pro-market, it is in favor of successful movies and therefore awards the luckiest producers, who were part of the oligopolistic realm[4] in the 80s. The declining popularity of French films intensified this

[2] Nevrtheless, our conclusions also apply to all industry sectors (distribution, exhibition), see Cocq (2000).

[3] In 1988, automatic subsidies resulting from exhibitions equalled :

- 120 % of the TSA generated by the film, when gross box-office< 30 MF
- 95 % of the TSA generated by the film, when 30 <gross box-office< 40 MF
- 60 % of the TSA generated by the film, when gross box-office > 40 MF

[4] The cinema industry, such as the main cultural industries, is based on a double characteristics. Its whole organisation depends on a margin oligopolistic structure, which concentration level is growing from upstream to downstream. The cinema activity is ruled by a oligopolistic realm. Beside this realm, there are a great part of small competiting firms. This competitive margin is characterized by low market shares,

trend. As box-office ratings were shared by fewer films, only the most successful could benefit from the program. In 1982, the ten most profitable French films (214 films were distributed that year) took hold of 31% of the French cinema market. This rate exceeded 50% in 2000 (208 French films distributed that year). From 1993 to 1999, 10 producers supplied 23 big French box-office successes (more than 2,5 million tickets sold). Among them, Gaumont and Renn Productions (Pathé Group) each produced 7 of those films, the other production companies having produced only one film a piece. The rest of the production industry shows a decrease in its audience.

In this context, the amount of automatic aid awarded to the successful firms was not really needed (the excess was scarcely spent). In addition, the amounts awarded to the smaller and most numerous production firms were insufficient for either incentives or production.

By abolishing the digressive rate system in order to favour high-budget movies, the Plan Lang benefited the most powerful, oligopolistic production firms of the French film industry. Since 1990, films with budgets exceeding 13,7 M€ have been produced by capital-intensive structures (see Annex 1). Nine companies account for 70% of the 39 expensive French movies produced between 1990 and 2000. These firms either belong to vertically integrated groups (Renn productions (Pathé Group) and Gaumont) or enjoy partnerships with major actors of the communication industry, such as Hachette Première (Lagardère Group), Paradise Films (Vivendi Group / Générale d'Image), Films Alain Sarde (Canal Plus / Studio Canal +), Christian Fechner Films (UGC). Six of the fourteen other firms listed are certainly financially independant, but their activity either reveals privileged links to a powerful firm of the sector (Telema[5] in 1995 with Canal Plus) or is based on the prestige of its manager[6] within the sector.

What follows shows that the evolution encouraged by the Plan Lang jeopardises the domestic diversity, while accelerating the "americanization" of parts of the French film production.

### *2.3.1 The Plan Lang: jeopardising domestic diversity*

The over-production of big-budget films threatens independent film companies, as well as market diversity of French films. If automatic aid to film production seems limited as an incentive (as shown above), it remains significant when we look at the assets provided to the oligopolies and their big-budget films. Subsidies, as a protectionist device, lead to the creation of a protected type of movie. The Plan Lang with its encouragement of large budget movies is a prime example of this phenomenon. [Messerlin 1995]. Moreover the Plan Lang aims to reverse the trend that was noticed in the 1980's (see above). Major production firms do not even take advantage of the total amount of their public subsidies. Encouraging those firms to commit themselves to make expensive movies leads

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by structural firms weakness, and full access to market. The growing concentration from upstream to downstream shows that margin firms mainly belong to the producing sector. Indeed, the power of major firms belonging to the oligopolistic realm is based on the distribution and exhibition control, i.e great economies of scale sectors.

[5] In 2000, this firm became a 49%-owned subsidiary of TF1.

[6] Rigolo Films is Dominique Farrugia's company, the current Programme Director of Canal Plus, and manager of the Comedy thematic channel in 2000. RP is Roman Polanski's company. Ice 3 is owned by Thierry Lhermitte, and Films 13 by Claude Lelouche.

to a new trend, characterized by optimised management of such public subsidies. Thus, the Plan Lang shifts the incentive power of automatic aid to the big budget film production sector. Between 1990 and 2001, over 50% of the automatic subsidies supporting the French film production were invested in films costing 7.62 M€ (or more), as opposed to 39% in 1989.

Through the Plan Lang's impact, the number of films with budgets exceeding 7.62 M€ has more than quintupled between period I and III (see table 8). Over the 1996-2001 period, these films represent more than 13% of the total number of "French-initiated" films (against 2.9 % over the period 1985-1988). Nevertheless, the popularity of French films has declined. Between period I and III, the French film market lost 7.2 points in market share. The big-budget productions have not been able to reverse the trend of loss of popularity of French movies (but this situation might have been worse without such productions). However, comparing French trends with European data allows us to take a different view. For instance, during the period 1985-2001, the share of domestic movies shown in all European countries follows the same pattern as in France. (-7.35 points). The support seems also to result in an over[7] supply of expensive films. This strengthens the trend towards increasing concentration in the film sector. This phenomenon impacts the distribution of films in theatres as well as grants.

***Table 8 : Shares of French initiated films with budgets exceeding 7,62 M€***

| *Annual average during the period* | **Period I [1985-1988]** | **1989** | **Period II [1990-1995]** | **Period III [1996-2001]** |
|---|---|---|---|---|
| Number of French- initiated films with budgets exceeding 7.62 M€ | 3.75 | 10 | 12 | 19.3 |
| Percentage of French-initiated films | 2.9% | 9.9% | 11.7% | 13.25% |
| Share of French- initiated films with budgets exceeding 7.62 M€ in total investment | 14.95% | 28.3% | 33.7% | 43.8% |
| Share of French initiated films with budgets exceeding 7.62 M€ in TV investment (excluding Canal Plus) | 3.13% | 23.6% | 36.3% | 46.53% |
| Share of French- initiated films with budgets exceeding 7.62 M€ in TV investment (including Canal Plus) | 3.13% | 23.6% | 31% (without 90) | 41.9% |
| Share of French- initiated films with budgets exceeding 7.62 M€ in automatic support invested | 15.2% | 33% | 53% (without 94) | 51% (without 97-98) |
| Market share of French movies in France | 40.9% | 34.3% | 33.6% | 33.7% |
| Market share of European movies on the European market[1] | 26.75% | 19% | 16.6% | 19.4% |

Source : CNC, d'après l'Observatoire Européen de l'Audiovisuel. Author's calculations.
1. 1985 à 1994 : Europe 12. From 1995 : Europe 15. From 1991, reunification of Germany.

The cost of big-budget movies is such that it requires a major distribution effort. During 1997-2000 period, 77% of French-initiated film production with budgets over 7.62 M€ were edited into more than 30 copies to Paris and its suburbs. For French movies in this budget category, this represents an almost insignificant difference with the best-distributed American movies. When American films issue twice as many copies as French movies, this advantage is only 16% over the first ten percent of the related best-distributed films (in the French situation, 2/3 of these films are budgeted above 7.62 M€). (see table 9). In such an environment, the increased number of French films over 7.62 M€ increases the scarcity of theatres available for independent films. The profitability of this part of domestic production is declining substantially, and this is amplified by the awkward conditions of the film distribution market (congestion of release dates , reduced showing periods). All these elements adversely impact the production of innovative films (*Films d'art et d'essai*).

***Table 9 : The number of "first week copies": comparison between French initiated and American movies (Paris and its Outskirts 1997-2000)***

| | **0-5 copies** | **6-10 copies** | **11-20 copies** | **21-40 copies** | **+40 copies** | **Copies/title** |
|---|---|---|---|---|---|---|
| French initiated films | 39% | 13,86% | 18,90% | 21% | 6,4% | 14,2 |
| American movies | 16% | 10,10% | 14,30% | 35,60% | 19,4%, | 24,4 |

Source : CNC, Ciné-Chiffres. Author's calculations. French initiated movies : 643 ; American movies : 677.

In addition, there has been an overuse of funding (the following points are described in table 8). The increasing number of films with a budget over 7.62 M€ is not matched by a corresponding increase in funding (2.2 fold increase at current prices). Such a disparity leads to a significant concentration of funding favouring expensive movies (and therefore the oligopolies of the film industry). During period III, these big-budget movies received 43.8% of all investment allocated to French film production (as opposed to 28.3% in 1989). This domination is especially evident in the area of TV-related investments. Network channels invest in projects that are seen as rewarding from the standpoint of audience share and prestige (expensive films). During period III, almost 50% of network hertzian channels' film investments were directed to movies exceeding 7.62 M€. Due to the wide range of Canal Plus' contractual obligations (see table 3), however this channel has so far offered a more diversified investment policy somewhat softening this phenomenon of concentration. (see table 8).

In this context, independent film companies face difficult challenges. They may decide to lose their independence (at least the most competitive of these firms) and join larger firms. If they decide to keep their independent status, their activity will become scarce, the quality of their films will decline, as will their profitability, and they will likely disappear. The CNC study (2002) on film support confirms this analysis: "*Professionals are worried that the new characteristics of the film market (such as the preference for big-budget productions) may result in an ever increase of financial demand and supply*".

[7] Market forces will not necessarily lead to pareto-optimal situations. Monopolistic competition models illustrate the difficulties encountered by the market in fixing optimal quantities of films.

*2.3.2 The Plan Lang: americanizing parts of the French film production*

The imbalance between the high investments of French big-budget films and the size of the domestic market accounts for the small returns on investment. Cocq (2000) shows that a French film's probability of making a profit increases with its budget size until it reaches a certain level : (3,2-7,62 M€). In this segment, the probability of a return on investment exceeds 25%. The return on investment probability of films budgeted over 15,2 M€ (20%) is superior to the one observed in the (7,62-15,2) segment, but is nevertheless inferior to the one shown by American movies in their domestic market. Augros' study (1995), based on a sample of 63 American movies featured between 1980 and 1994, shows that the return on investment probability of blockbusters (28%) is far superior to that of smaller productions. In Britain, the failure and retreat of Channel Four[8] from the large-budget market illustrates the risks the EU will have to face if it adopts such a policy.

***Table 10 : French film return on investment: probability and budgets (exploitation in movie theatres only)***

| **Budget, *M€*** | **Probability** |
|---|---|
| 0-1,52 | 0,16 |
| 1,52≤B<3,05 | 0,24 |
| 3,05≤B<7,62 | 0,25 |
| 7,62≤B<15,24 | 0,16 |
| 15,24≤B | 0,2 |

Source : Cocq (2000).

1. On the basis of 362 French movies shown between 1987 and 1995. The profitability criteria is checked when : 0.8 x Budget (excluding public support) > Gross box-office (excluding the share of exhibitors). See Cocq (2000), pp. 349-350.

As far as large-budget movies are concerned, the combination of high investment with low profitability calls for the formalization of films to respond to specific popular demand requirements. If one analyses big-budget film scenarios, one can observe that this formalization has already taken place in many cases, and that it follows two specific templates. The first strategy is domestically-oriented. The market has influenced production in such a way that most productions opt for historical reconstitutions or popular comedy. The second strategy is oriented towards foreign markets. It focuses on movies based on the Hollywood blockbuster model («*Jeanne d'Arc*», «*Vatel*», «*Le Cinquième élément*», «*La neuvième porte*», «*Léon*», «*Belphégor*», «*Le pacte des Loups*», «*Le raid*»…).

Making these costly films profitable will lead to the definitive renouncement of French cultural elements in French films. It will lead to more and more English-speaking French films with an americanized content, and English-speaking actors. Only the money invested in the movie will be French. In the end, the automatic aid system will lead to the destruction of the culture it was meant to protect.

[8] Film Four suffered losses that amounted to 8,4 M€ in 2001.

## 2.4 The discretionary aid program for production

Discretionary production subsidies[9] (created by the decree of June 16th 1959) rely on the Advance on Receipts system. Since 1959, its aims have been to assist the production of more ambitious and innovative French films that would be unable to break even financially without public subsidies. The Advance on Receipts programme is also meant to encourage young directors' first movies, as well as the renewal of talent. The Plan Lang and its big-budget policy introduced a third objective: *"Encouraging works in which cultural ambition and budget levels are intrinsically linked"*.

The Advance on Receipts Commission[10] is divided in two entities. The first commission is dedicated to the "search for new talents" and examines first-film projects. The second entity is dedicated to projects with a proven cultural value (second and third objectives). Applicants must provide a comprehensive dossier [11] which includes scenarios[12] and budget plans. Loans disbursed as a result of the Advance of Receipt system are conditionally repayable. Between 1960 and 1990, 1209 movies were funded through this system; among these, only 9.9 % of projects repaid all the money lent to them. The Advance on Receipts Commission is, in fact, a patron of the arts.

The Advance on Receipts programme seems to stand out as the central element of the French film policy. Yet, the amount of money it allocates is modest when compared with the automatic aid program (see table 11). This characteristic of the Advance on Receipts programme was all the more damaging during period II, when the harmful effects of the automatic support system increased.

***Table 11 : The Advance on Receipts Programme within the Support Fund***

| | **Period I (1985-1988)** | **Period II (1992-2001)** |
|---|---|---|
| Advance on Receipts / Comprehensive aid to film industry | 11,4% | 10,8% |
| Advance on Receipts / Automatic aid program for production | 33,6% | 27,5% |

Source: CNC.

An evaluation of the Advance on Receipts programme raises two questions: does it favour first-film production? Does it favour artistic quality? These questions are also linked with the problem of talent rejuvenation. Indeed, it is generally recognized that talent cannot be assessed on the basis of the quality of a first film. Time and subsequent films can either negate or confirm this criterion.

[9] This aid takes two forms : advance before filming and advance after filming. The second form is exceptional, and benefits film productions that are experiencing significant financial difficulties. Our report will focus on the advance before filming scheme.

[10] A third commission is dedicated to the advance after filming scheme.

[11] Producers, scriptwriters and directors can apply for the advance.

[12] The commission may provide financial aid for the script re-writing of films it feels need « improvement ».

### *2.4.1 Impact of the Advance on Receipts on first films*

***Table 12 : Beneficiaries of the Advance on Receipts Programme (first films)***

| **Annual average during the period** | **Period I [1983-1989]** | **Period II [1990-1996]** | **Period III [1997-2000]** |
|---|---|---|---|
| Admissions of French-initiated films (millions of tickets sold) | 63,64 | 39,5 | 46,3 |
| Number of French-initiated films | 114,9 | 102,2 | 142 |
| Number of first films (1) | 28,8 | 31,6 | 54,75 |
| Share of first films on French-initiated films | 25 % | 31 % | 38,6% |
| First films having been awarded an Advance on Receipts (2) | 12,8 | 14,6 | 18,75 |
| First films without an Advance on Receipts | 16 | 17 | 36 |
| (2) / (1) | 44,4 % | 46,2 % | 34,2% |
| Advance on Receipts : share of first films | 34,14 % | 25,98 % | 36,6% |
| Average Advance on Receipts awarded to first films (M€, current prices) | 0,27 | 0,34 | 0,38 |
| Share of the Advance on Receipts in first film financing | 18,25% | 13,7% | 18,7% |

Source : CNC. Author’s calculations. The choice of periods is linked with the evolution of French Movies’ ticket sales and public support (Plan Lang of 1989).

Table 12 illustrates the dynamics of the production of French-initiated first films. Whereas during the first two periods, the number of French-initiated films decreased by 11,6 %, the number of first films progressed slightly. During period III, French films’ increased competitiveness (+13,5 % admissions increase compared with period II) resulted in an important increase of the level of production (+39,8 %). This latter was largely attributed to the growth of the number of first films. When we look at the entire French domestic production, first films seem to be impacted by forces which weaken or amplify the reversal of French film box-office performance. On the whole, the ratio of first films in French film production has improved since 1983, and established itself at around 40 % during Period III.

The impact of the Advance on Receipts programme evolves with the overall economic situation. It is particularly efficient in periods of crisis. Over the period II, two-thirds of the increase of the number of first films is attributable to the progress registered by films benefiting from the advance. During this period, the Advance on Receipts programme nevertheless did not seem to favour access (*by producing a quality seal of approval*) to other forms of financing. (Year 1990, chart 9). In periods of growth, the production market, thanks to the TV channels’ contractual obligations, favours the production of many first-movies without the help of the Advance on Receipts programme. During Period III, the Advance on Receipts programme was also effective, as more risky projects are unable to benefit from more traditional financing.

***Table 13 : Evolution of the finance structure of first films (1990 – 2000)***

| | | | | Share in the financing | | | | |
|---|---|---|---|---|---|---|---|---|
| **Year 1990** | Number | Average budget (M€) | Average advance (M€) | Advance on Receiptss | Free-air TV Channels | Canal Plus | Sofica | Others |
| A/R awarded first films | 12 | 2,94 | 0,33 | 11,2% | 12,8 % | 10 % | 6,6 % | 59,4 % |
| Other first films | 14 | 1,95 | - | - | 12,4 % | 9,5 % | 6,2 % | 71,9 % |
| **Year 2000** | | | | | | | | |
| A/R awarded first films | 17 | 2,38 | 0,4 | 16,8% | 8,54% | 19,3% | 2,2% | 70 % |
| Other first films | 14 | 3,83 | - | - | 14,9% | 29,2% | 5,8% | 50,1 % |

Source: CNC.

While the Advance on Receipts programme was particularly relevant to first-film producers during the third period, one must not forget that the amounts awarded were insufficient. Bonnell (1989) states that *" …First time directors, when applying for financial support, may encounter many obstacles. Directors who are the recipients of aid may not find the necessary complementary financing and yet, will consider filming "*. This will certainly affect the quality of French movies.

### *2.4.2 Quality and Talent Rejuvenation*

The second objective to Advance on Receipts programme is to encourage both quality and talent renewal. The second commission in charge of this objective is meant to assure a continuing supply of promising new filmmakers while encouraging the production of movies of recognized artistic. Two main conceptions of film-making quality coexist. The first indicator of quality is based on audiences. The second indicator, as defined by Benzoni (2001), is that a work of quality meets "a certain number of criteria, which we wish the consumer to consume”. Therefore, a notion of quality that would be determined subjectively is not measurable. As a result, the Advance on Receipts Commission’s evaluation is uncertain, imperfect and even partial. Several studies, however, propose a theoretical framework that will enable us to define the criteria for quality.

Gourney (1988) proposes the most convincing method. He confronts films that were awarded aid by the Advance on Receipts Commissions (642 film directors benefited from the Advance) during the period of 1959 to 1985 to film criticicism written over the period. The study enumerates 111 "good directors" or considered as such by the critics. Of these, 101 (i.e. around 91 %) were beneficiaries of Advance on Receipt loans. Out of these film directors, 34.6 % (i.e. 35) were first-time directors. Thus the Advance on Receipts programme played an important role in the promotion of quality. However, when we face the issue of new talent, this assessment does not stand, and results are less conclusive.

#### *2.4.2.1 The Advance on Receipts Programme’s Impact on High Quality Cinema*

Since its creation, the Advance on Receipts programme has supported quality productions. According to Gourney (1988), 91 % of good directors, listed as such by critics, have benefited from the advance support scheme. Our list of French filmmakers on the official competition roster at the Cannes film festival (1981-1995 period) confirms this analysis. Among them, 95 % (quality is not an issue here) have benefited at least once from the Advance on Receipts programme.

Moreover, Messerlin (1995) states that film industry professionals and critics provide a good assessment of quality. The share of awards received by French films in the main international festivals (Venice, Cannes and Berlin) represents a good indicator of the quality of French film since the creation of the Advance on Receipts system. In addition, since quality has no borders, this indicator encompasses recognition not only of French critics, but also of foreign professionals. Therefore, these results should provide a better appraisal of quality than that proposed by Gourney (1988). Since 1987, the French share of film awards has dramatically decreased. Thus, it seems that Advance on Receipts programme was unable to reverse the decline of French film production, and preserve its quality. Besides, this evolution illustrates the discrepancy between the French and the international perceptions of quality.

***Table 14 : French « share of awards in the three major film festivals (1981-1998)***

| **French share of awards ( % )** | **1981-1986** | **1987-1993** | **1994-1998** |
|---|---|---|---|
| Berlin | 8,3 | 7,1 | 10 |
| Cannes | 20,8 | 14,3 | 18,8 |
| Venise | 42,8 | 27,7 | 12,5 |
| **Total** | 24 | 16,7 | 11,8 |

Source : Author's calculations. For each festival only major awards were taken into account. Cannes (Palme d'or, Grand prix du jury, prix du jury et prix de la mise en scène), Berlin (the first two awards), Venice (The first two awards + the Jury Award).

In this respect, the Advance on Receipts commission is often subject to criticism. Its choices seem far too conservative. Between 1981 and 2001, 60 highly-privileged directors (11%) have received awards for at least three of their films. This minority accounts for 25% of all advances on receipts granted in twenty years. The quality of their work is indisputable, but it nevertheless seems that the amounts granted were in no way justified. Most of these famous film-makers (90%) began their career in the 60's and 70's. These established professionals enjoy recognition by the most efficient production firms and/or by the public. Since these directors are not subject to the ups and downs of the market, the Advance on Receipts programme, in their case, could be considered as a rent[13]. Moreover, these same advances could have benefited first-movie productions.

### *2.4.2.2 The Advance on Receipts programme as a mean to discover new talents*

Gourney's study showed that only 35 alleged "good directors" benefited from the Advance on Receipts programme when starting their career. "The discovery rate" of new talent by the Advance on Receipts Commission is therefore 31%. During the same period, more than 272 first-time directors were awarded a loan. Only 35 of them can now be considered "good directors". The success rate the Commission is therefore of 12.86 %. We must not forget that the commission awards directors on the base of the application they turn in. It is thus impossible to state that undiscovered directors have all made an application for Advance on Receipt grants. The rate of talent discovery based on the aforementioned criteria is therefore ambiguous. Table 15 proposes an answer.

During period II, the Advance on Receipts programme encouraged the production of second films. About 50% of the first film awarded directors appealed for a second movie (compared with 39,6% for filmmakers who did not benefit from the support). This result corroborates the commission's choice of first-movie directors. But, with or without an advance for their first film, about 20% of filmmakers having begun their careers between 1987 and 1996 can be considered as established directors today. During this period, the Advance on Receipts programme, however, shows a rate of renewal that is less important than the market's. If we consider that the Commission hasn't always been judicious in the discovery of talent, we can state that it has been over-generous on occasions. This situation is a perfect illustration of the waste caused by aid to cultural products.

***Table 15 : The impact of Advance on Receipts on first-time directors' rate of recurrence***

| ***Annual average*** | **Period I [1981-1986]** | | **Period II [1987-1996]** | |
|---|---|---|---|---|
| | **First films with A/R** | **First films without A/R** | **First films with A/R** | **First films without A/R** |
| Number | 78 | 100 | 145 | 125 |
| Recurrent rate (Second film) | 52,2% | 48,6% | 49% | 39,6% |
| Revelation rate (Third film, or more) | 29,4% | 28,4% | 19,1% | 17,2% |
| Renewal rate (quality criterion *ex-post*)[1] | 22,4% | 14,4% | 11,8% | 12,25% |

Source: CNC. Author's calculations.

1. Criterion used for the renewal rate calculation is checked when the director makes a film selling more than 500 000 tickets.

Nevertheless, this conclusion is disturbing, as the programme's talent renewal objective seems more and more difficult to achieve. The collapse of number of first-movies that have received the Prix Louis Delluc illustrates this trend (see table 16).

[13] This statement is questionable: 1) there are several examples of famous directors producing experimental films that *are* "subject to the vagaries of the free market"; 2) royalties to well-know high-quality directors could be seen as an incentive for young directors to improve the quality of their works.

*Table 16 : First films and the Prix Louis Delluc.*

| | **Period I [1960-1979]** | **Périod II [1980-1998[1]]** |
|---|---|---|
| Share of the 1, 2 & 3 films awarded | 55 % | 31,6% |

Source: Author's calculations.
Since 1999, the Prix Louis Delluc incorporates a "first film award".

The Advance on Receipts Commission cannot be held responsible. Decline in the public' s movie attendance is due to sociological, historical and economic reasons[14]. Nevertheless, some critics imply that the Commission, as a corporation, favours the uniformization of new production. As Bonnell (1989)[15] indicates: *"talent is sought out by the smallest number." And "instead of favouring eclecticism, corporatism tends to standardize choices".*

**3. Multilateral negotiations as a support to domestic reform**

Far to be an handicap, WTO negotiations can be very helpful for helping France to make the necessary reforms—to transform the current FAP (a traditional and inefficient industrial policy as shown above) into a really « cultural » policy, which is not the case today.

3.1 Multilateral negotiations, technical progress and the FAP

The WTO support for reforms is important all the more because FAP will be strongly challenged by technical progress which is independent from the ongoing multilateral negotiations. First, in a near future (within the five next years), it will become relatively cheap to download films and audiovisual works—making existing broadcast quota regime obsolete. Firms on the Internet will be able to comply to current quotas by permanently supplying a range of films fulfilling the 40-60 percent quotas on US-European/French films. But, this situation will offer no protection to French movies because French consumers will be free to download only US films, if they wish so.

Second, in the longer term, audio-visual and telecom firms will likely be increasingly integrated. In such a context, « reciprocity » -- a key concept in WTO negotiations -- will become an operating mode internalized by firms. For instance, a French telecom firm with an audiovisual subsidiary may be ready to trade a better access into foreign telecom markets for a better access for foreign firms into French and European audiovisual markets. In many respects, this strategy was implemented by Vivendi-Universal (it failed because it was pursued too quickly and expensively, not because it was fundamentally wrong).

Last but not least, technical progress will offer French movie producers—and specially those producing « cultural » movies—opportunities that the current technology does not allow. Until now, launching films requires heavy investments in distribution (the number of cinema screens, marketing, etc). In this context, cultural movies draw too few viewers to be a reasonably attractive option. As a

[14] The Commission's activity depends of the quality of the supply of films, which reflects generations' tastes.

result, the major Hollywood firms have built their reputation on their ability to produce films which can be seen worldwide—specialising in producing entertainment films, and investing massively in distribution capacities. Recent years have shown the limitations of such a strategy. Increasing costs in the US have induced Hollywood majors to produce outside the US, to join their forces with foreign partners, etc.—all moves which cause the transfer of skills to non-US film-makers. There has thus been an erosion of the traditional comparative advantages of Hollywood producers which is most visible in the category of audio-visual works.

New technology will change this traditional balance between large and small-scale films. Digital equipment will reduce the costs of producing movies, while Internet connections will provide access to viewers worldwide at minimal costs—hence to reduce the threshold for the efficient scale of producing films and audio-visual works, a trend that will favour cultural movies.

## 3.2 What are the possible French strategies at the WTO?

A first strategy would be to oppose any liberalization in the audio-visual sector. This strategy will be very costly at the WTO, and also within the EC. Denying market access to US or Brazilian film industries would have to be «paid» by not getting access into US and Brazilian markets for services or goods which will be of interest for French exporters. Even if the media industry has a much larger political than economic influence, it may find it hard to fight all the French and European export-oriented producers who will be eager to get better access to foreign markets. Serious difficulties could even emerge within the European audio-visual industry, because France has a very extreme position—not at all representative of Europe's interests in audiovisuals. Three EC Member states (Britain, Portugal and Spain) have large markets outside the Community (these three languages are spoken by more than 150 million of people, compared to the 75-85 million of French-speaking people). For a long time, Germany and Italy have large domestic markets, and small foreign markets. The other EC Member states are small countries which have always been largely exposed to foreign influence in audiovisuals. France is the only EC Member state which historically had a large foreign market in films.

The alternative strategy for France is to use the WTO negotiations as an instrument for sustaining the necessary domestic reforms. In fact, the potential impact of these negotiations could be assessed for each of the main FAP instruments.

It is most unlikely that WTO negotiations would endanger the seat tax because reducing or eliminating this tax is unlikely to be a priority of France's trade partners. This tax is not only non-discriminatory with respect to foreign producers, but any reduction of the seat tax could also be compensated by increasing the VAT tax without France running the risk of being accused of impairment or nullification of concessions. Since the current VAT tax for cinemas is set at a reduced rate, the French government could simply argue that increasing the VAT tax is just a move to a

[15] See Bonnel (1989), p. 579.

normal VAT rate.

A progressive elimination of broadcasting quotas could be a more plausible request from France's trading partners. However, such a request seems unlikely. The reason is that foreign negotiators would lose the (necessarily limited) «capital» of concessions they may have for something (the increased relaxation of the quota system) that technological progress will provide free within a few years (see above). In fact, French authorities would be wise to anticipate inevitable technological changes by progressively relaxing the quotas—for instance by lowering them to 35 percent, that is, the current market share of French films in cinemas. Such an unilateral move would help the domestic industry adjust to upcoming market conditions.

Similarly, foreign negotiators are unlikely to spend their capital of concessions by requesting the elimination of investment quotas. From their perspective, these quotas raise a problem only to the extent that they fund subsidies. As a result, negotiators tend to focus directly on the subsidy issue. Moreover, increased competition between French TV channels is slowly eroding the monopoly situation of Canal Plus, the French film industry's major funding unit—hence endangering the ability to sustain the investment quota system.

As a result, the only crucial issue in audiovisuals is likely to be the subsidy issue. The key instrument to satisfactorily solve such an issue is a «reference paper.» Such a paper will lay down the specific disciplines on subsidies agreed by all the WTO Members to be imposed in the audio-visual sector. Contrary to most other services, it seems reasonable to allow subsidies—more precisely, to allow subsidies for cultural reasons, while banning subsidies for mere industrial reasons. Making a distinction between the two types of subsidies is not so difficult [Cocq 2000, Messerlin 2000]. In addition, a reference paper is a flexible instrument which can be revised, if needed. In sum, a well drafted reference paper will be of major assistance necessary in shifting the current FAP into a cultural policy.

If successful, WTO negotiations will help France put her current FAP back under control by limiting the amount of subsidies and shifting them away from entertainment works. It will not, however, solve a problem which needs to be addressed domestically: how can one make sure that the remaining subsidies will be disbursed wisely, that is, on the best cultural films? Such a question about the efficiency of the subsidy scheme raises the broad issue of efficient «patrons. There has been a lively debate on the ability of a democratic State to be a patron, dating back to the French Revolution, with the most frequent conclusion that such a State is most unlikely to be an efficient patron. More precisely, there is a need for appropriate institutions. The domestic issue is thus to design the best institutions to play the role of patrons [Messerlin 2000].

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