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Trade versus Culture: The Policy of Cultural Exception and the WTO

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Introduction

The intensified flows of goods, services, peoples and ideas across borders intrinsic to globalization have had multiple and multifaceted effects. Those affecting culture have perhaps been the most controversial, and certainly the most politically and even emotionally charged. The 'trade and culture' quandary, or, to phrase it perhaps more revealingly, 'trade versus culture' quandary, is a discussion that emerged in the forum of the WTO and its institutional predecessor, GATT. As is well documented, GATT came into being after World War II as a provisional agreement that was meant to eliminate trade discrimination and reduce tariffs and other barriers to trade, and over the years it grew into a *de facto* international organization with a substantial impact on trade-related issues (Jackson, 1997; Matsushita et al., 2006). The way in which the organization advanced its goals of liberalizing trade and opening up domestic markets was through the so-called 'negotiation rounds,' during which the GATT members agreed to make concessions and establish rules to which they subsequently found themselves committed. The 'trade and culture' debate became truly conspicuous during one of these rounds of trade negotiations – the Uruguay Round – which was launched in Punta del Este, Uruguay, in 1986 and lasted until 1994. It was during this period that a number of countries, with France and Canada prominently featuring at the forefront, fought the so-called 'exception culturelle' battle. It is the purpose of this chapter to examine the proponents of the cultural exception policy, their strategies and demands, and to explore how they came to be reflected in the law and policy of the WTO. The chapter also looks at the current state of affairs because, although the WTO law has not undergone any substantial amendments since its entry into force in 1995, the media landscape has in the meantime been truly transformed, in some aspects in a revolutionary manner. The broader picture of global governance has not remained still either, with new and emergent powers, and

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changing mechanisms of rule-making and -taking (Cottier & Delimatsis, 2011; WTO, 2011).

Sketching the origins of the cultural exception discourse

Although the idea of state protection of cultural identity is not exceptional and has existed for many years, possibly going as far back as the origins of sovereignty (Petito, 2001), the real policy debates about the relationship between trade and culture began only after World War I.[1] This has to do with both the changing nature of the medium and with that particular period in history. In the former sense, although the printed media, such as books, newspapers and magazines, were the first manifestation of the industrialization of cultural production, they had relatively low tradability, mostly due to their cultural specificity and the use of local language, which made them less appealing to a critical mass of consumers outside the domestic market (Footer & Graber, 2000, pp. 116–117). Audiovisual media, especially film, in contrast, proved more suitable for engaging and appealing to a broader audience. After World War I the initial predominance of European cinema had subsided and Hollywood had clearly become the new center of global film-making, exporting visual entertainment in vast amounts (Trumpbour, 2007; Bruner, 2008; Singh, 2008). As a reaction to this shift of power and fearing both the economic and cultural impact of Hollywood, many European governments introduced measures to protect their domestic film industries, mostly in the form of import and screen quotas. These measures found expression in the 'Special Provisions Relating to Cinematograph Films,' which became part of GATT 1947. Article IV thereof permitted quotas for 'the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time,' while preserving GATT's general ban on quantitative restrictions on imports (Article XI). The screen quotas were ultimately short-lived but Article IV of GATT is symptomatic of the sought-after (and accepted by GATT members) cultural exception, as well as of its narrow focus on audiovisual media, in particular film, which, before convergence, has been the domain most immediately affected by imports and accordingly most burdened with measures of domestic support.

The idea that some measures protecting national cultural industries may be justified was also reflected in bilateral and regional fora. In 1988 the cultural exception proponents celebrated a major victory when Canadian negotiators introduced a 'cultural exclusion' clause in the Canada–US Free Trade Agreement (CUSFTA).[2] Five years later, such exclusion was also included in the North American Free Trade Agreement (NAFTA), which incorporated by reference CUSFTA in Annex 2106.[3] It should be noted, however, that this cultural clause was coupled with a retaliation provision that significantly limited by design its practical use: while cultural industries could be exempted from the

agreement, either party could 'take measures of equivalent commercial effect in response to [such] actions' (CUSFTA Article 2005; also Cahn & Shimmel, 1997).

The cultural exception proponents attempted to transplant these localized 'successes' into the multilateral context. The tension between trade and culture has intensified at this point of time, as technology – especially satellites – increasingly facilitated the diffusion of cultural content, not only in film but also in television, thereby also reducing the efficiency of existing national protectionist measures. Another important reason for the particular intensity of the cultural exception battle fought during the Uruguay Round had to do with the round's special mandate and the significance of its outcomes. It was not simply aimed at dismantling tariff barriers but was a much further-reaching undertaking that ultimately led to the establishment of the WTO with a new structure and an impressively effective dispute-settlement mechanism in comparison with any existing international adjudicative body (Jackson, 1997). The WTO, which became operational on 1 January 1995, included domains that were previously unaffected by international trade regulation, most notably intellectual property (by means of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)) and services (by means of GATS).

While the proclaimed ultimate goal of the European Communities[4] and Canada was to exempt any product or service that is culture-related from the rules of the negotiated WTO agreements[5] (hence *exception culturelle*), the main focus of their efforts was in fact on the exclusion of audiovisual services. Pursuant to the technical classification scheme, which WTO members applied during the negotiations and in tailoring their concessions, these included motion picture and videotape production and distribution services; motion picture projection services; radio and television services; radio and television transmission services; and sound recording (WTO, 1991). Reflecting this narrow focus of the tension, during the Uruguay trade talks, a Working Group on Audiovisual Services was established. Its essential task was to consider whether the special cultural considerations related to the audiovisual sector demanded its total exclusion from the scope of the services agreement, or whether a dedicated annex to the agreement would provide a solution. The opinions differed profoundly, and even the somewhat more diplomatic vernacular of trade representatives could not conceal the chasm between those in favor of free trade and those in favor of shielding (national) culture. While Canada and audiovisual media exporters, such as India, Brazil and Hong Kong, were important actors (WTO, 1990a), it is noteworthy that the greatest clash on media matters was between the EU and the USA (Singh, 2008, p. 122 and *passim*).

Although the EC itself has limited powers in cultural affairs, as the core competence remains with the member states (Craufurd Smith, 2004, 2011), it has more leeway in the field of audiovisual services.[6] The TWF Directive, adopted in 1989, is an expression of this and has become the centerpiece of the evolving

and expanding European media policy (Burri, 2007; Harrison & Woods, 2007). Noteworthy in the context of the present discussion is that despite being essentially a liberalization instrument, the TWF Directive contained two specific provisions (articles 4 and 5), which were the only tools at the EU level per se meant to serve cultural goals by ensuring a balance of offerings in the EU broadcasting markets. Article 4 of the TWF Directive calls upon member states to ensure, where practicable and by appropriate means, that broadcasters allocate a majority of time on television channels to European-made programs (the so-called 'European works'). Article 5 of the TWF Directive is intended to ensure that a minimum proportion of viewing time (10 per cent) is reserved for European works created by independent producers, or alternatively that a minimum program budget is allocated to independent productions. The European Community was undoubtedly keen to preserve these quotas (Burri, 2007; Attentional et al., 2011) and thus to make them permissible at the international level (Burri, 2009). Generally, the EU sought to secure sufficient wiggle room for cultural policy measures to be taken at both the European Community and the member state levels.

The EU pursued these goals by relying on a set of arguments relating to the specific qualities of cultural goods and services. This underlying strategy has been typical of the EU's positioning in global governance debates bearing on culture, and it became truly fully fledged after the end of the cultural exception battle and in its conceptual and institutional transformation into a cultural diversity policy (Burri, 2010a). At their very basis, such policies are built around the two-pronged axiom that some sort of additional regulation is indispensable in markets for cultural goods and services because they fail, and that the ensuing market failures can be corrected through state intervention.[7] These economic rationales have been strengthened in the political context by the (surprisingly) enduring negative attitude towards globalization and its effects, including those upon culture (Held et al., 1999; Cowen, 2002; Giddens, 2002). More concretely, the cultural identity line has been prominent in the tactics of the EU – on the one hand by emphasizing the importance of the audiovisual industry to European identity and unity, and by highlighting the harmful effects of the US entertainment industry on the other (Singh, 2008, pp. 132–133).

The EU sought to ensure that in liberalizing audiovisual services, their cultural specificities would be respected, by means of an annex (WTO, 1990). Audiovisual services, defined fairly broadly, were to be exempted to a significant extent from the obligations of most-favored-nation (MFN), national treatment and market access (WTO, 1990) – that is, from the core non-discrimination duties and progressive liberalization rationale, which underlie the entire multilateral trade system. It is fair to say that the EU was not completely united in this approach and there were various opinions within the

European Community, with France being very proactive and Germany and the UK somewhat reluctant (Singh, 2008, pp. 122–123). Yet the EC, headed at the time by Jacques Delors, acted as a strong policy entrepreneur, reflecting as well as shaping the views of the member states (Ross, 1995, p. 115; Levy, 1999; Singh, 2008, p. 127). The framing of the audiovisual service matter has had a positive feedback effect and boosted European cultural identity as a shared value and a policy objective (Goff, 2000, 2007; Singh, 2008, pp. 133–134).

The USA, fervently lobbied by the entertainment industry (Grant & Wood, 2004, pp. 352–376; Singh, 2008, pp. 134–138), matched the European offensive. The USA was opposed to any cultural exception, regardless of whether the exception was part of the overall framework agreement or confined to audiovisual services. Its strongest argument was that of disguised protectionism, especially considering the intrinsic difficulty of defining 'national' and 'culture.' It also stressed consumers' freedom of choice, as well as other positive effects of free trade in cultural products (WTO, 1990a). Being cautious about pushing too far on the cultural identity issue, the USA had been consistent in framing the whole debate as one on trade rather than culture (Singh, 2008, pp. 134–135).

The cultural exception discourse is particularly interesting as an expression of media policy at the global level. One reason is the high stakes involved in resolving the audiovisual services quandary, as it almost turned into a stumbling block for the entire multilateral trade agenda (Graber, 2004), which had been designed as a 'single undertaking' and accordingly demanded agreement by all on all issues. One must also bear in mind, however, that the audiovisual sector was only one deal among many, and there were trade-offs and other interests within the WTO bargaining process and outside it for parties on both sides of the trench line (Braithwaite & Drahos, 2000; Singh, 2008).

The law of the WTO and the agreement to disagree

Eventually the cultural exception agenda only partially achieved its goals. On paper, the text of the WTO Agreements includes no cultural exception of any kind. Such a reading does not, however, reveal the practical reality of liberalized services markets and of the policy options available. Shortly before the adoption of the Marrakesh Agreement establishing the WTO, the EU and the USA agreed to disagree on addressing cultural matters without striking any concrete deal.[8] This would have long-term implications for both the law of the WTO and for future endeavors to shape cultural toolkits at all levels of governance.

The gist of the Uruguay Round results in the field of services is that while no services sector is excluded from GATS (except for services supplied in the exercise of governmental authority, Article I:3(b)), there are a number of flexibilities

built in, which allow in effect the lesser opening up of certain sectors, which are sensitive to domestic constituencies (Galt, 2004). Compared with GATT, which regulates trade in goods, GATS offers substantially more wiggle room for national policy-makers and is less aggressive in terms of opening markets. While under GATT, obligations regarding national treatment, which basically prohibit discrimination between like domestic and foreign products, and the ban of quantitative restrictions apply across the board, the GATS framework adopted a 'bottom-up' (or 'positive list') approach. Thereby WTO members can choose the services sectors and subsectors in which they are willing to make market access (Article XVI of GATS) or national treatment (Article XVII of GATS) commitments, and can define the modalities of these commitments. Even the MFN obligation – that is, the duty to treat equally all like foreign services and services suppliers, which is fundamental to the entire trade system – can be subject to limitation under GATS (Article II:2).

As a result of this malleability in design and in spite of the considerable economic gains to be reaped from the liberalization of audiovisual media services (Roy, 2005, p. 941; Singh, 2007), almost all members, with the notable exception of the USA, Japan and New Zealand, have been reluctant to commit and have listed significant MFN exemptions (Roy, 2005; WTO, 2010). Indeed, audiovisual media is the least liberalized services sector. The EU and its member states have made no commitments (WTO, 1997) and tabled a number of MFN exemptions, relating mostly to the extension of national treatment to audiovisual works covered by co-production agreements and support schemes, such as the MEDIA program (WTO, 1994).

What is particularly interesting when looking at the members' commitments for audiovisual services, and most illustratively those of the EU, is that they reflect a resolute 'all-or-nothing' approach. The substantial scheduling flexibility permitting a variety of commitments ranging between full liberalization and absolute non-commitment is not made use of. This is odd because for subsectors where government regulations and trade restrictions are not common, such as sound recording, there is still a ridiculously low level of commitment. In a more systemic sense, this is odd because the very goals of an international trade agreement are compromised:

> Indeed, absence of commitment in a given sector, while it remains an option, means that a Member can, at any time, take whatever market-access or national treatment limitation [...] This absence of any guarantee of openness stands in stark contrast to the economic and trade importance of the [audiovisual] sector (and in particular its intensive use of technology and creativity) as well as the importance of the predictability and stability given by commitments – that is, the certainty that certain restrictions won't be maintained or introduced in the future.
>
> (Roy, 2005, pp. 940–941)

Despite this state of affairs, which permits almost unlimited possibilities for measures protecting domestic cultural industries and/or discriminating against foreign products and services, in political terms, the scope for domestic measures regarding trade in culture has not been found sufficient. The Uruguay Round's 'Agreement to Disagree' was a mere ceasefire that offered no real solution for the cultural proponents. The progressive liberalization commitment incorporated into GATS (Article XIX) was impending and the MFN exemptions made were at least theoretically limited in time, although countries have not taken this recommendation earnestly.[9]

The general exceptions available under articles XX of GATT and XIV of GATS, which could justify measures otherwise violating the WTO norms in the respective products and services trade domains, were deemed insufficient to provide appropriate consideration of the pursuit of cultural objectives. Article XX(f) of GATT was the notable exception because it was designed to exempt measures for the protection of 'national treasures of historic, artistic, or archaeological value.' The scope of the provision was, however, thought to be too limited and of little use when contemporary creative production, such as films or television programs, was at stake. Furthermore, the norm had no counterpart under GATS and could not help when services were affected. A particularly hard blow to the cultural exception backers had been the *Canada – Periodicals* case,[10] which signaled the unwillingness of the WTO adjudicative bodies to engage in balancing trade versus culture values, as the case was decided by the panel and the Appellate Body to the benefit of the USA by focusing narrowly on the core trade issue, and despite CUSFTA's cultural exception clause.

Doha Round developments

One could maintain that the post-Uruguay status quo has been a *de facto* cultural exception, albeit not cast in law and under the constant pressure of further liberalization. This has prompted the cultural exception proponents to look for solutions outside the WTO and resulted in the change of venue to UNESCO under the more positive but also more ambitious agenda of cultural diversity (Burri, 2010a). This regime-shifting, which resulted in the successful adoption of the 2005 UNESCO convention, is well documented and aptly discussed elsewhere in this book.

In the meantime, although the intensity of the trade versus culture clash within the WTO seems to have subsided, few changes can be expected. The Doha Development Agenda, launched in 2001 (WTO, 2001), as the next round of trade negotiations, originally intended to be completed by 2005, is proof of this. Although Doha is not stalling because of audiovisual media services, the present state of requests and offers for the sector reveals precious few new commitments and no future-oriented rules design. The EU is adamantly pursuing its non-committal approach (WTO, 2005), despite the many requests by

other WTO members to address the status quo either by full commitments in market access and national treatment, or by more targeted actions, such as binding of the current level of market opening or commitments under specific subheadings – commonly, film production, distribution and projection services, and sometimes sound recording (WTO, 2010).

Implications beyond audiovisual services and beyond Doha

Despite the recognition widely shared by key WTO members that the audiovisual sector has changed dramatically (Graber, 2004, pp. 166–170; Roy, 2005, pp. 931–936), in particular in the face of the convergence of information technology, telecommunications and media services, companies and sectors, and of the sweeping transformations caused by the Internet, there is little agreement on the way forward. The cultural exception debate has been perpetuated and has had multiple (arguably negative) effects outside the domain of audiovisual services, as initially narrowly construed. This is particularly evident in the discussions about advancing liberalization and coherent global regulation in the 'neighbouring' areas of telecommunications and electronic commerce (Burri, 2009), which mirror the legacy line of separation between the EU and the USA.

In line with its cultural exception strategy, the EU zealously argues that 'Electronic deliveries consist of supplies of services which fall within the scope of the GATS' (WTO, 2000), and seeks to ensure that all digital media fall within the category of audiovisual services (WTO, 2006) – thus retaining its flexibility for MFN exemptions and limited commitments. This position of the EU has been adopted in the context of its overall global trade and culture agenda (European Commission, 2007), as well as in relation to the modernization of the TWF Directive (now the AVMS Directive),[11] to include on-demand media services too, and to prescribe soft cultural quotas for them (Burri, 2007). The USA takes the opposite position and has sought the deepest mode of liberalization available – that is, that of GATT, coupled with the Information Technology Agreement (WTO, 1999). The opposing agendas of the EU and the USA allow no straightforward solution – an unfortunate situation, which has been exacerbated by the insufficient ability of the WTO law to adapt to rapid technological changes due to the intrinsic characteristic of the WTO as a 'member-driven' organization (Davey & Jackson, 2008). Specifically in the field of services, this is also due to the underlying and now largely outmoded services classification scheme (Weber & Burri, 2012; Tuthill & Roy, 2012). For instance, as the law currently stands, online games as a new type of cultural content platform could be fitted into the discrete categories of computer and related services, value-added telecommunications services, entertainment or audiovisual services (Wunsch-Vincent, 2006, p. 71), each of which implies a completely

different set of duties and flexibilities. The electronic commerce instance is illustrative of the negative spillovers of the cultural exception debate, which prevent any practical solution in the short to medium term and leave the vital economic field of digital trade in a haze of uncertainty (although the *US – Gambling* rulings[12] have confirmed that WTO rules are applicable to electronically supplied services). The lack of a solution within the multilateral context of the WTO has also prompted members to take other, bilateral or regional, paths to advance their policy priorities (Wunsch-Vincent & Hold, 2012), and, overall, has led to increased fragmentation of rules and complexity in governance, which may render the protection of global public goods, such as cultural diversity, more difficult (Maskus & Reichman, 2005; Brousseau et al., 2012).

Manifold proposals have been advanced in the literature to solve the 'culture versus trade' conundrum and make it more like 'culture and trade' (Burri, 2009, pp. 45–54). One important cluster of suggestions attempts to find the appropriate linkage between the law of the WTO and the UNESCO convention, seeking mutual supportiveness between the two regimes and the attainment of some legal certainty through the 'harder' adjudicative mechanisms of the WTO (e.g., Graber, 2006). Another key group suggests the 'renovation' of some WTO rules, whether culture-specific or not, to make the law of the WTO more suitable for the simultaneous advancement of trade liberalization and of public interest goals of importance to members and the international community (e.g., Voon, 2007a, 2007b). Next to the various points of critique one could formulate with regard to these proposals (Voon, 2007b; Burri, 2009), a common feature is that none of them appears readily practicable, to a large extent due to the strong path dependence in the cultural exception, as well as in the 'culture as commodity' discourses, which renders any trade and culture debate a 'dialogue of the deaf' (Roy, 2005).

This is particularly regrettable as it obstructs innovation in legal engineering, which would have been possible in the new digital media environment, as it has immediately impacted on the markets for cultural symbols, and has transformed the very ways in which we create, distribute, access, use and reuse cultural content – the ways in which we participate individually or as part of a group in cultural processes (Benkler, 2006). In particular, some features of the digital media environment – such as i) unlimited 'shelf-space,' abundance of content and its different organization in cyberspace; ii) new ways of distributing, accessing and consuming content; iii) new modes of content production, where the user is not merely a consumer but is also an active creator – could be seen as paths for overcoming the current stalemate in trade and culture debates, and for striving for cultural diversity with measures that are not designed as trade barriers or other plain mechanisms of blocking foreign and financing national content (Burri, 2010b, 2012b).

Concluding remarks

The cultural exception debate has been triggered by advancing globalization and the increasing difficulty of reconciling economic and non-economic objectives, national sovereignty and global responsibilities. The discussions have been heavily politicized and reached their pinnacle in the Uruguay Round of negotiations, which marked the highest degree of institutionalization of economic globalization at the international level with the establishment of the WTO in 1995. The cultural exception strategy has only partly achieved its goals – although the law of the WTO does not contain any exception for cultural goods and services, it permits flexibilities in particular in the field of services, which allow WTO members to shield some sensitive sectors from liberalization. The cultural exception proponents, led by the EU, have used this opportunity to the fullest, specifically in the audiovisual services sector. Media services is the sector with the lowest level of commitments.

Little has changed since the conclusion of the Uruguay talks in 1994, which is odd since we are now faced with a completely transformed media landscape. This may have led, among other things, to the inadequacy of the existent policy measures aimed at achieving (national) cultural objectives, to negative spillovers to other policy domains and to an overall incoherence in governance. Unfortunately, very few of these problems have been appropriately addressed in the ongoing Doha Round of negotiations, and it is unlikely that they will be resolved even under the highly optimistic scenario of a successful close of the Doha Round, as the cultural exception legacy endures. The mismatch between the 'old' cultural exception policies and the practical reality of contemporary media is exacerbated by the changes in global governance, characterized by ailing multilateralism, intensified forum-shopping, proliferating preferential trade agreements, the repositioning of traditional world powers and the emergence of new and stronger global actors, to name but a few trends (Jackson, 2007; Cottier & Delimatsis, 2011; WTO, 2011). The novel modes of cybergovernance, such as unilateral state action with global effect, regulation through intermediaries, regulation through code and technology in general, only compound the existing complexity (Benkler, 2006; Lessig, 1999, 2006; Burri, 2012a). Against this backdrop, any future solution to the trade and culture quandary appears unlikely in the forum of the WTO alone and would have to match the complex reality of multilevel, multidomain governance in the attempt to reconcile economic and non-economic objectives.

Notes

1. The overview here is limited to policy dimensions of the trade versus culture quandary. To be sure, this clash has been the subject of various sociological,

philosophical and cultural studies enquiries, such as, notably that of the Frankfurt School (Footer & Graber, 2000).

2. Canada – US Free Trade Agreement, 22 December 1987–2 January 1988, 27 ILM 281 (1988).
3. NAFTA, 17 December 1992, 32 ILM 289 (1993). The cultural exception exists only between Canada and both the USA and Mexico, but not between the USA and Mexico. In practice, this provision offering comfort to the Canadian cultural sector has had little effect.
4. It was the 'European Communities' and not the European Community or the EU, which signed the WTO Agreements. This was due to some questions regarding the competence of the European Community in external affairs, which was subsequently clarified (Council Decision 94/800/EC of 22 December 1994, concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986–1994), OJ L 336/191, 23 December 1994). As of 1 December 2009, which signifies the entry into force of the Lisbon Treaty, the name used in the WTO is the European Union.
5. The law of the WTO is contained in several agreements, attached as annexes to the Marrakesh Agreement establishing the WTO. GATT, GATS and TRIPS are contained in Annex 1 of the WTO Agreement. Other annexes concern additional aspects of liberalization, such as the dispute-settlement procedure (Annex 2), the trade policy review mechanism (Annex 3) and certain plurilateral agreements (Annex 4).
6. Following the principle of subsidiarity, the European Community is to encourage cooperation between member states but could, if necessary, supplement its action in certain fields, notably in 'artistic and literary creation, including in the audiovisual sector' (Article 151(2) of the EC Treaty, now 167(2) of the TFEU).
7. Failures typical of markets for cultural goods and services are those due to i) economies of scale in production and distribution; ii) the nature of competition in products with substantial public goods aspects; iii) the impact of externalities on the pricing of cultural products; and iv) collective action problems (Sauvé & Steinfatt, 2000; Baker, 2001).
8. As legend would have it, early in the morning of 14 December 1994, just before the US president's Fast Track Authority was to expire, Leon Brittan, as EU representative, offered the US trade representative (USTR), Mickey Kantor, a deal to bind the television quota at 49 per cent as part of an audiovisual services agreement and to continue negotiations on box office receipt taxes in France, as well as on blank video and audiotape taxes. After discussions with Bill Clinton and Hollywood representatives, the US turned the deal down. Instead of signing something which the lobbies at home would have opposed, the USTR walked away and the Europeans made the infamous MFN exemptions from GATS (Preeg, 1995, p. 172; Singh, 2008, pp. 135–136).
9. The GATS Annex on Article II Exemptions states that, 'In principle, such [MFN] exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.' The exemptions made should have thus, in principle, expired in 2005; many members' lists have nonetheless defined the exemption's intended duration as indefinite.
10. WTO Panel Report, *Canada–Certain Measures Concerning Periodicals (Canada – Periodicals)*, WT/DS31/R, adopted 14 March 1997; WTO Appellate Body Report, *Canada – Certain Measures Concerning Periodicals (Canada – Periodicals)*, WT/DS31/AB/R, adopted 30 June 1997.

11. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010, on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (AVMS Directive), OJ L 95/1, 15 April 2010.
12. WTO Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (US – Gambling)*, WT/S285/R, 10 November 2004, confirmed by Appellate Body Report, WT/DS285/AB/R, 7 April 2005.

References

Attentional, Gide Loyrette Nouel, Headway International & Oliver & Ohlbaum (2011). *Study on the Implementation of the Provisions of the Audiovisual Media Services Directive Concerning the Promotion of European Works in Audiovisual Media Services*. Prepared for the European Commission.

Baker, C. E. (2001). *Media, Markets, and Democracy*. Cambridge: Cambridge University Press.

Benkler, Y. (2006). *The Wealth of Networks: How Social Production Transforms Markets and Freedom*. New Haven, CT: Yale University Press.

Braithwaite, J. & Drahos, P. (2000). *Global Business Regulation*. Cambridge: Cambridge University Press.

Bruner, C. M. (2008). Culture, sovereignty, and Hollywood: UNESCO and the future of trade in cultural products. *International Law and Politics, 40*(2), 351–436.

Brousseau, E., Dedeurwaerdere, T. & Siebenhüner, B. (Eds.) (2012). *Reflexive Governance for Global public Goods*. Cambridge, MA: MIT Press.

Burri, M. (2007). The new audiovisual media services directive: Television without frontiers, television without cultural diversity. *Common Market Law Review, 44*(6), 1689–1725.

Burri, M. (2009). Trade *versus* culture in the digital environment: An old conflict in need of a new definition. *Journal of International Economic Law, 12*(1), 17–62.

Burri, M. (2010a). Cultural diversity as a concept of global law: Origins, evolution and prospects. *Diversity, 2*(8), 1059–1084.

Burri, M. (2010b). Trade and culture in international law: Paths to (re)conciliation. *Journal of World Trade, 44*(1), 49–80.

Burri, M. (2012a). Controlling new media (without the law). In M. Price & S. Verhulst (Eds.), *Handbook of Media Law and Policy* (pp. 327–342). London: Routledge.

Burri, M. (2012b). Cultural protectionism 2.0: Updating cultural policy tools for the digital age. In S. Pager & A. Candeub (Eds.), *Transnational Culture in the Internet Age* (pp. 182–212). Cheltenham: Edward Elgar.

Cahn, S. & Schimmel, D. (1997). The cultural exception: Does it exist in GATT and GATS frameworks? How does it affect or is it affected by the Agreement on TRIPS? *Cardozo Arts and Entertainment Law Journal, 15*(2), 281–314.

Cottier, T. & Delimatsis, P. (Eds.) (2011). *The Prospects of International Trade Regulation: From Fragmentation to Coherence*. Cambridge: Cambridge University Press.

Cowen, T. (2002). *Creative Destruction: How Globalization is Changing the World's Cultures*. Princeton, NJ: Princeton University Press.

Craufurd Smith, R. (Ed.) (2004). *Culture and European Union Law*. Oxford: Oxford University Press.

Craufurd Smith, R. (2011). The evolution of cultural policy in the EU. In P. Craig and G. de Búrca (Eds.), *The Evolution of EU Law* (pp. 872–895). Oxford: Oxford University Press.

Davey, W. J. & Jackson, J. H. (2008). *The Future of International Economic Law*. Oxford: Oxford University Press.

European Commission. (2007). European agenda for culture in a globalizing world (COM(2007) 242 final).

Footer, M. E. & Graber, C. B. (2000). Trade liberalisation and cultural policy. *Journal of International Economic Law, 3*(1), 115–144.

Galt, F. S. (2004). The life, death, and rebirth of the 'cultural exception' in the multilateral trading system: an evolutionary analysis of cultural protection and intervention in the face of American pop culture's hegemony. *Washington University Global Studies Law Review, 3*(3), 909–935.

Giddens, A. (2002). *Runaway World: How Globalisation is Reshaping Our Lives*. London: Routledge.

Goff, P. M. (2000). Invisible borders: Economic liberalization and national identity. *International Studies Quarterly, 44*(4), 533–562.

Goff, P. M. (2007). *Limits to Liberalization: Local Culture in a Global Marketplace*. Ithaca, NY: Cornell University Press.

Graber, C. B. (2004). Audio-visual policy: The stumbling block of trade liberalisation. In D. Geradin & D. Luff (Eds.), *The WTO and Global Convergence in Telecommunications and Audiovisual Services* (pp. 165–214). Cambridge: Cambridge University Press.

Graber, C. B. (2006). The New UNESCO Convention on Cultural Diversity: A counterbalance to the WTO. *Journal of International Economic Law, 9*(3), 553–574.

Grant, P. S. & Woods, C. (2004). *Blockbusters and Trade Wars: Popular Culture in a Globalized World*. Vancouver, CA: Douglas & McIntyre.

Harrison, J. & Woods, L. (2007). *European Broadcasting Law and Policy*. Cambridge: Cambridge University Press.

Held, D., McGrew, A., Goldblatt, D. & Perraton, J. (1999). *Global Transformations: Politics, Economics and Culture*. Stanford, CA: Stanford University Press.

Jackson, J. H. (1997). *The World Trading System: Law and Policy of the International Economic Relations*. Cambridge, MA: MIT Press.

Lessig, L. (1999). *Code and other Laws of Cyberspace*. New York, NY: Basic Books.

Lessig, L. (2006). *Code: Version 2.0*. New York, NY: Basic Books.

Levy, D. A. (1999). *Europe's Digital Revolution: Broadcasting Regulation, the EU and the Nation State*. London: Routledge.

Matsushita, M., Schoenbaum, T. J. & Mavroidis, P. C. (2006). *The World Trade Organization: Law, Practice, and Policy*. Oxford: Oxford University Press.

Petito, D. S. (2001). Sovereignty and globalization: Fallacies, truth, and perception. *New York Law School Journal of Human Rights, 17*(4), 1139–1172.

Preeg, E. H. (1995). *Traders in a Brave New World: The Uruguay Round and the Future of the International System*. Chicago, IL: University of Chicago Press.

Maskus, K. E. & Reichman, J. H. (Eds.) (2005). *International Public Goods and Transfer of Technology under a Globalized Property Regime*. Cambridge: Cambridge University Press.

Ross, G. (1995). *Jacques Delors and European Integration*. Oxford: Polity.

Roy, M. (2005). Audiovisual services in the Doha Round: Dialogue de sourds, the sequel? *Journal of World Investment and Trade, 6*(6), 923–952.

Sauvé, P. & Steinfatt, K. (2000). Towards multilateral rules on trade and culture: protective regulation or efficient protection? In Productivity Commission & Australian National University (Eds.), *Achieving Better Regulation of Services* (pp. 323–346). Canberra: AusInfo.

Singh, J. P. (2007). Culture or commerce? A comparative assessment of international interactions and developing countries at UNESCO, WTO, and beyond. *International Studies Perspectives, 8*(1), 36–53.

Singh, J. P. (2008). *Negotiation and the Global Information Economy*. Cambridge: Cambridge University Press.

Trumpbour, J. (2007). *Selling Hollywood to the World: US and European Struggles for Mastery of the Global Film Industry, 1920–1950*. Cambridge: Cambridge University Press.

Tuthill, L. & Roy, M. (2012). GATS classification issues for information and communication technology services. In M. Burri & T. Cottier (Eds.), *Trade Governance in the Digital Age* (pp. 157–178). Cambridge: Cambridge University Press.

Voon, T. (2007a). *Cultural Products and the World Trade Organization*. Cambridge: Cambridge University Press.

Voon, T. (2007b). A new approach to audiovisual products in the WTO: Rebalancing GATT and GATS. *UCLA Entertainment Law Review, 14*(1), 1–32.

Weber, R. H. & Burri, M. (2012). *Classification of Services in the Digital Economy*. Zurich: Staempfli & Berlin: Springer.

WTO. (1990). Working group on audiovisual services, communication from the European communities, draft sectoral annex on audiovisual services (MTN.GNS/AUD/W/2).

WTO. (1990a). Working group on audiovisual services, note on the meeting of 5 and 18 October 1990 (MTN.GNS/AUD/2).

WTO. (1991). Services sectoral classification list (Doc.MTN.GNS/W/120).

WTO. (1994). European communities and their member states, final list of Article II (MFN) Exemptions (GATS/EL/31).

WTO. (1997). European communities and their member states, schedule of specific commitments, trade in services, supplement 3 (GATS/SC/31/Suppl. 3).

WTO. (1999). Work programme on electronic commerce: submission by the United States (WT/COMTD/17; WT/GC/16; G/C/2; S/C/7; IP/C/16).

WTO. (2000). WTO, communication from the European communities and their member states: Electronic commerce work programme (S/C/W/183).

WTO. (2001). WTO, Doha ministerial declaration (WT/MIN(01)/DEC/W/1).

WTO. (2005). Communication from the European communities and its member states, conditional revised offer (TN/S/O/EEC/Rev.1).

WTO. (2006). Communication from the European communities and its member states, draft consolidated GATS schedule (S/C/W/273).

WTO. (2010). Council for trade in services, audiovisual services, background note by the secretariat (S/C/W/310).

WTO. (2011). *The WTO and Preferential Trade Agreements: From Co-Existence to Coherence*. Geneva: WTO.

Wunsch-Vincent, S. (2006) *The WTO, the Internet and trade in Digital Products: EU-EC perspectives*. Oxford: Hart.

Wunsch-Vincent, S. & Hold. A. (2012). Towards coherent rules for digital trade: Building on efforts in multilateral versus preferential trade negotiations. In M. Burri & T. Cottier (Eds.), *Trade Governance in the Digital Age* (pp. 179–221). Cambridge: Cambridge University Press.