

Selected Bibliography on International Law and the Protection of Cultural Diversity

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1. *Recommended Reading*

Bernier, I., 'Trade and Culture', in: Macrory P. F. J., Appleton A. E., and Plummer M. G. (Eds.), *The World Trade Organization: legal, economic and political analysis*, (Springer Science + Business Media, Inc., 2005), p. 747-94.

This article surveys the treatment of cultural goods and services in international trade law. It reviews the history of the trade and culture debate and examines the rights and obligations of Members of the World Trade Organization (WTO) on trade in cultural goods and services. The article discusses the specificity of cultural products, namely the double nature of entertainment products as well as vectors of cultural identity. Different solutions to the trade and culture quandary have been proposed. The article explores how satisfactory these solutions are and argues in favour of the recognition of the fact that the multilateral trade regime cannot on its own provide answers to non-trade concerns. To address the question of the relationship between culture and trade exclusively from the standpoint of trade is to subject culture to commercial imperatives and thereby prevent it from playing its role. The article promotes the need for an international legal instrument that would articulate from a cultural perspective the basic requirements for the preservation and promotion of cultural identities and cultural diversity.

**Footer, M.E. and Graber, C.B., 'Trade Liberalization and Cultural Policy',
Journal of International Economic Law 3(1), 2000, p. 115-44.**

This article examines the tension between global trade liberalization and the pursuit of cultural policies by national governments. It reviews the background to the discourse over trade and culture and a range of domestic cultural policy measures. Attention is also focused on the emergent issues governing the relationship between intellectual property, trade and culture, and recent disputes involving these at the WTO. The article then analyses the pervasiveness of globalization and its impact on the way in which cultural goods and services are traded and distributed, using the new media technologies, and its effects on cultural identity. The final section of the article discusses some prospects for the treatment of trade and culture at the WTO at the beginning of the new Millennium. A broad cultural exception to trade is rejected in favour of the application of specific rules governing trade and culture.

**Graber, C.B., 'The New UNESCO Convention on Cultural Diversity: A
counterbalance to the WTO?' *Journal of International Economic Law*
9(3), 2006, p. 553-74.**

On 20 October 2005, the 33rd UNESCO General Conference adopted by a majority of 148 votes to two the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CCD). The major objectives of the CCD are the recognition of the dual nature of cultural expressions as objects of trade and artefacts of cultural value and the recognition of the sovereign right of governments to formulate and implement cultural policies and measures for the protection and promotion of cultural diversity. The ambitious role assigned to the CCD by its proponents is to fill an existing lacuna for cultural objectives in public international law and to serve as a cultural counterbalance to the World Trade Organization (WTO) in future conflicts between trade and culture. Opponents, however, have criticized the CCD as an instrument of disguised protectionism and claimed that it violates freedom of expression and information. This article endeavours to explain how cultural diversity has become an issue of international law and provides a critical assessment of the strengths and weaknesses of the CCD. It explores in particular the possible linkages between the CCD and the WTO.

**Hahn, M.J., 'A Clash of Cultures? The UNESCO *Diversity Convention* and
International Trade Law', *Journal of International Economic Law* 9(3),
2006, p. 515-52.**

The adoption, on 20 October 2005, of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Diversity Convention)* has returned the limelight to the suitability of World Trade Organization (WTO) rules for cultural products. This article shows that the *Diversity Convention*, while an important step towards the recognition of cultural diversity as an internationally recognized public choice of states, does not affect the rights and obligations of WTO Members as such. The original purpose of the Convention was to create a safe haven for cultural policies and protect them from WTO disciplines. However the central

operative provision for bringing about the desired shielding effect for domestic policies safeguarding national cultural industries against foreign competition, its now-article 20, while making a general claim to non-subordination in paragraph 1, modifies this broad statement in paragraph 2 so as to only apply to treaties concluded at the same time or later. The article explores how to avoid or minimize an undesirable incongruence between liberal trade rules and the right of states to protect shelf-space for domestically produced cultural products.

2. *Bibliography*

- Acheson, K. and Maule, C., 'Convention on Cultural Diversity', *Journal of Cultural Economics* 28, 2004, p. 243-56.
- Bernier, I., 'Cultural Goods and Services in International Trade Law', in: Browne, D. (Ed.), *The Culture/Trade Quandry: Canada's Policy Options*, (Centre for Trade Policy and Law, 1998).
- Bernier, I., *A UNESCO International Convention on Cultural Diversity*, (UNESCO, 2003).
- Bernier, I. (2003), *On the relation of a future international convention on cultural diversity to other international agreements*, available at: www.screenquota.org/home1/down.asp?filename=27.pdf&table_name=bboard5 (15.11.2006).
- Bernier, I., 'Content regulation in the audio-visual sector and the WTO', in: Geradin, D., and Luff, D. (Eds.), *The WTO and Global Convergence in Telecommunications and Audio-Visual Services*, (Cambridge University Press, 2004), p. 215-42.
- Bernier, I., 'Trade and Culture', in: Macrory, P. F. J., Appleton, A. E., and Plummer, M. G. (Eds.), *The World Trade Organization: legal, economic and political analysis*, (Springer Science + Business Media, Inc., 2005), p. 747-94.
- Bernier, I. and Ruiz Fabri, H., *La mise en oeuvre et le suivi de la Convention de l'UNESCO sur la protection et la promotion de la diversité des expressions culturelles: Perspectives d'action*, (Québec, Government of Québec, 2006).
- Bossche, P., van den, *The Law and Policy of the World Trade Organization* (Cambridge University Press, 2005).
- Braun, M. and Parker, L., 'Trade in Culture: Consumable Product or cherished articulation of a Nation's soul?' *Denver Journal of International Law & Policy* 22, 1993, p. 155-91.
- Carmody, C., 'When "cultural identity was not at issue": Thinking about Canada--

- certain measures concerning periodicals', *Law & Policy in International Business* 30(2), 1999, p. 231-321.
- Chao, T.W., 'GATT's Cultural Exemption of Audiovisual Trade: The United States May Have Lost the Battle But Not The War', *University of Pennsylvania Journal of International Economic Law* 17, 1996.
- Cohen, E., 'Globalization and cultural diversity', in: UNESCO (Ed.), *World Culture Report: Cultural Diversity, Conflict and Pluralism*, (UNESCO, 2000), p. 66-91.
- Consumers International, *Copyright and Access to Knowledge: Policy Recommendations on Flexibilities in Copyright Laws*, (Kuala Lumpur, Consumers International, Asia Pacific Office, 2006).
- Cottier, T. and Oesch, M., *International Trade Regulation - Law and Policy in the WTO, the European Union and Switzerland - Cases, Materials and Comments* (Cameron May Ltd., 2005).
- Dahrendorf, A., *Trade Meets Culture: The Legal Relationship between WTO Rules and the UNESCO Convention on the Protection of the Diversity of Cultural Expressions*, Maastricht Faculty of Law Working Paper 2006-11, available at <http://www.unimaas.nl/default.asp?template=werkveld.htm&id=F60BL5P00MJ0466V63M6&taal=nl> (20.11.2006).
- Donaldson, J.D., 'Television without Frontiers: The continuing tension between liberal free trade and European cultural integrity', *Fordham International Law Journal* 20, 1996, p. 90-180.
- Donders, Y., *Towards a Right to Cultural Identity* (Intersentia, 2002).
- Dymond, W.A. and Hart, M.M. (2001), *Abundant Paradox: The Trade and Culture Debate*, available at: <http://www.carleton.ca/ctpl/pdf/papers/culture.pdf> (14.11.2006).
- Falkenberg, K., 'The Audiovisual Sector', in: Bourgeois, J. H. J., Barrod, F., and Fournier, E. G. (Eds.), *The Uruguay Round Results - A European Lawyers' Perspective*, (European Interuniversity Press, 1995), p. 429 - 34.
- Footer, M.E. and Graber, C.B., 'Trade Liberalization and Cultural Policy', *Journal of International Economic Law* 3(1), 2000, p. 115-44.
- Freedman, D.D. (2002), *Trade Versus Culture: An Evaluation of the Impact of Current GATS Negotiations on Audio-visual Industries*, available at: <http://www.isanet.org/noarchive/freedman.html> (14.11.2006).
- Gagnon, J., *Rapport 3 - La Convention sur la protection et la promotion de la diversité des expressions culturelles: défis et possibilités pour le Québec*, (Québec, Université du Québec, École nationale d'administration publique, 2006).

- Galt, F.S., 'Note: 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, 2004, p. 909-35.
- Gauthier, G., O'Brien, E. and Spencer, S., 'Déjà Vu or New Beginning for Safeguards and Subsidies Rules in Services Trade', in: Sauvé, P., and Stern, R. M. (Eds.), *GATS 2000: New Directions in Services trade Liberalization*, (Brookings Institution Press, 2000), p. 165-83.
- Geradin, D. and Luff, D., *The WTO and Global Convergence in Telecommunications and Audio-Visual Services* (Cambridge University Press, 2004).
- Germann, C., 'Towards a Cultural Contract to counter trade related cultural discrimination - "Cultural Treatment" and "Most-Favoured-Culture" to promote cultural diversity vis-a-vis international trade regulations', in: Obuljen, N., and Smiers, J. (Eds.), *UNESCO Convention on the protection and promotion of the diversity of cultural expressions - Making it work*, (to be published in 2006).
- Gervais, D., *The TRIPs Agreement. Drafting History and Analysis* (Sweet & Maxwell, 1998).
- Geuze, M. and Wager, H., 'WTO Dispute Settlement Practice Relating to the TRIPS Agreement', *Journal of International Economic Law* 2(2), 1999, p. 347-84.
- Goodenough, O.R., 'Defending the Imaginary to the Death? Free Trade, National Identity, and Canada's Cultural Preoccupation', *Arizona Journal of International and Comparative Law Winter*, 1998, p. 203-53.
- Graber, C.B., 'WTO: A Threat to European Films?' in: Banus, E. (Ed.), *Proceedings of the V Conference 'European Culture'*, (University of Navarra, 1998).
- Graber, B., 'Audiovisual Media and the Law of the WTO', in: Graber, C. B., Girsberger, M., and Nenova, M. (Eds.), *Free Trade versus Cultural Diversity: WTO Negotiations in the Field of Audiovisual*, (Schulthess, 2004), p. 15-64.
- Graber, C.B., 'Audio-Visual Policy: The Stumbling Block of Trade Liberalisation?' in: Geradin, D., and Luff, D. (Eds.), *The WTO and Global Convergence in Telecommunications and Audio-Visual Services*, (Cambridge University Press, 2004), p. 165-214.
- Graber, C.B., Girsberger, M. and Nenova, M. (Eds), *Free Trade versus Cultural Diversity: WTO Negotiations in the Field of Audiovisual Services*, (Schulthess, 2004).
- Graber, C.B., 'The New UNESCO Convention on Cultural Diversity: A counterbalance to the WTO?' *Journal of International Economic Law* 9(3), 2006, p. 553-74.

- Hahn, M.J., 'Eine kulturelle Bereichsausnahme im Recht der WTO?' *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 56(1), 1996, p. 315-52.
- Hahn, M.J., 'A Clash of Cultures? The UNESCO *Diversity Convention* and International Trade Law', *Journal of International Economic Law* 9(3), 2006, p. 515-52.
- Hemel, A., 'The complex debate on audiovisual policy', in: Barnier, M., Berg, E., and Splunter, M. (Eds.), *Trading Culture: GATT, European cultural policies and the transatlantic market*, (Boekman Foundation, 1996), p. 83-95.
- Herold, A., 'European Public Film Support within the WTO Framework', *IRIS PLUS, Legal Observations of the European Audiovisual Observatory* 6, 2003, p. 8.
- Hoffmann, U. (2003), 'Specific Trade Obligations in Multilateral Environmental Agreements and Their Relationship with the Rules of the Multilateral Trading System - A Developing Country Perspective', paper presented at conference *Sub-Regional Brainstorming Workshop on the Trade and Environment Issues Contained in Paragraphs 31 and 32 of the WTO Doha Ministerial Declaration. Project on Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues* (Bangkok, 30 July - 1 August 2003).
- Hoskins, C., Finn, A. and McFadyen, S., 'Television and Film in a Freer International Trade Environment: US Dominance and Canadian Responses', in: McAnany, E. G., and Wilkinson, K. T. (Eds.), *Mass Media and Free Trade - NAFTA and the Cultural Industries*, (University of Texas Press, 1996), p. 63 - 91.
- Jamieson, B., *Trade Liberalization: Culture, Identity and Social Cohesion*, (Trade and Economic Division (EET), Department of Foreign Affairs and International Trade Canada, 2001).
- Jenks, W., 'The Conflict of Law-Making Treaties', *British Yearbook of International Law*, 1953, p. 401-53.
- Kish, K.A., 'Protectionism to Promote Culture: South Korea and Japan, a Case Study', *University of Pennsylvania Journal of International Economic Law* 22, 2001, p. 153-84.
- Knight, T., 'The Dual Nature of Cultural Products: An Analysis of the World Trade Organization's Decisions Regarding Canadian Periodicals', *University of Toronto Faculty of Law Review* 57(Spring), 1999, p. 165-91.
- Koskenniemi, M., *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, (Report of the Study Group of the International Law Commission, Geneva, General Assembly of the United Nations, 2006).

- MacMillan, M.J., 'Trade and Culture: Conflicting Domestic Policies and International Trade Obligations', *Windsor Review of Legal and Social Issues* 9, 1999, p. 5-30.
- Marceau, G., 'Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and other Treaties', *Journal of World Trade* 35(6), 2001, p. 1081-131.
- Matheny, R.L., 'In the Wake of the Flood: "Like Products" and Cultural Products after the World Trade Organization's Decision in Canada Certain Measures Concerning Periodicals', *University of Pennsylvania Law Review (November)*, 1998, p. 245-78.
- Messerlin, P., 'Regulating culture: has it 'Gone with the Wind'? in: Productivity Commission and Australian National University (Ed.), *Conference Proceedings: Achieving Better Regulation of Services*, (The Australian National University, 2000), p. 287-321.
- Morijn, J. (2005), 'Draft: The Place of Cultural Rights in the WTO System: A Cultural Rights Perspective of the Trade-Cultural Policy-Cultural Rights Triangle', paper presented at conference *Colloquium on Cultural Rights as Human Rights* (Florence, 28-29 October 2005).
- Neuwirth, R.J. (2002), 'The Cultural Industries and the Legacy of Article IV GATT: Rethinking the Relation of Culture and Trade in the Light of the New WTO Round', paper presented at conference *Cultural Traffic: Policy, Culture, and the New Technologies in the European Union and Canada* (Ottawa, 22-23 November 2003).
- Nichols, P.M., 'Trade without Values', *Northwestern University Law Review* 90, 1996, p. 658-719.
- Pauwels, C. and Loisen, J., 'The WTO and the Audiovisual Sector. Economic Free Trade vs Cultural Horse Trading?' *European Journal of Communication* 18(3), 2003, p. 291-313.
- Pauwelyn, J., 'The Role of Public International Law in the WTO: How Far Can We Go?' *American Journal of International Law* 95(July), 2001, p. 535-78.
- Pauwelyn, J., *Conflict of Norms in Public International Law* (Cambridge University Press, 2003).
- Pauwelyn, J. (2005), *Diversity, cultural and otherwise*, Duke law school, available at: <http://eprints.law.duke.edu/archive/00001248/01/diversityculturalandotherwise.pdf> (15.11.2006).
- Prowda, J.B., 'U.S. Dominance in the "Marketplace of Culture" and the French "Cultural Exception"', *Journal of International Law and Politics* 29, 1996, p. 193-210.

- Salmon, J.-M. and Lesales, M., *Market access issues for cultural goods and services in the European Union: another story of luck and burden*, (Caribbean Regional Negotiating Machinery,
- Sauvé, P. and Steinfatt, K., 'Towards multilateral rules on trade and culture: protective regulation or efficient protection?' in: Productivity Commission and Australian National University (Ed.), *Achieving Better Regulation of Services*, (The Australian National University Canberra, 2000), p. 322-52.
- Sauvé, P., 'Trade, Education and the GATS: What's In, What's Out, What's All the Fuss About?' *Higher Education Management and Policy* 14(3), 2002.
- WTO Secretariat, *Audiovisual Services*, communication to Council for Trade in Services (Geneva, 15.06.1998).
- Shao, M.W., 'Is There No Business Like Show Business? Free Trade and Cultural Protectionism', *Yale Journal of International Law* 20, 1995, p. 105-50.
- Stern, C., 'Nets Push to Remove National Ownership Cap', *Variety*, 1999, p. 6.
- Straumann, P., *Renaissance des brasilianischen Films? Positive Folgen des Audiovisions-Gesetzes*, *Neue Züricher Zeitung*, 2000).
- UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press, 2005).
- UNESCO, *World Culture Report 1998: Culture, Creativity and Markets*, (Paris, UNESCO, 1998).
- UNESCO, *Culture, trade and globalization: Questions and answers* (UNESCO, 2000).
- UNESCO, *World Culture Report 2000: Cultural Diversity, Conflict and Pluralism*, (Paris, UNESCO, 2000).
- UNESCO, *Preliminary Study on the Technical and Legal Aspects Relating to the Desirability of a Standard-Setting Instrument on Cultural Diversity*, (Preliminary study, Paris, UNESCO, 2003).
- UNESCO, *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 2005).
- Wheeler, M., 'Research Note: The 'Undeclared War' Part II. The European Union's Consultation Process for the New Round of the General Agreement on Trading Services/World Trade Organization on Audiovisual Services', *European Journal of Communication* 15(2), 2000, p. 253-62.
- World Intellectual Property Organization, *Collective Administration of Copyright and*

Neighbouring Rights (WIPO, 1990).

Witte, B., 'Trade in Culture: International Legal Regimes and EU Constitutional Values', in: de Búrca, G., and Scott, J. (Eds.), *The EU and the WTO: legal and constitutional issues*, (Hart, 2004), p. 237-55.

Wouters, J. and Meester, B., *UNESCO's Convention on Cultural Diversity and WTO Law: Complementary or Contradictory? Working Paper No. 73* (K.U. Leuven, Institute of International Law, 2005).

Zampetti, A.B., 'WTO Rules in the Audio-Visual Sector', *HWWA Hamburg Report* 229, 2003, p. 25.