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Globalisation, audiovisual  
industry and cultural diversity



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# Contents

■ <b>Presentation</b>	2
■ <b>Monographic:</b>	
<b>Globalisation, audiovisual industry and cultural diversity</b>	
"Cultural exception", national policies and globalisation: imperatives in democratisation and promotion of contemporary culture	3
<b>Divina Frau-Meigs</b>	
The "Cultural Exception" in the World Trade Organisation (WTO): The basis of the audiovisual policy in Catalonia	17
<b>Ramon Torrent</b>	
The WTO Doha round: what's at stake culturally	25
<b>Pierre Sauvé</b>	
From defending "Cultural Exception" to promoting "Cultural Diversity": European cultural policy and the Arab World	33
<b>Dima Dabbous-Sensenig</b>	
"South of the West": Cultural Coordinates of the Australian Audiovisual System	45
<b>Stuart Cunningham and Terry Flew</b>	
Mexico in the face of globalization: audiovisual policies to promote and protect its cultural diversity	53
<b>Laura Márquez Elenes</b>	
Indian Television in the Era of Globalisation: Unity, Diversity or Disparity?	59
<b>Mira Kapil Desai</b>	
The WTO, the Doha Negotiations and Developing Countries	71
<b>Miguel Rodríguez Mendoza</b>	
Interview with Pascal Lamy, Europe's Trade Commissioner	75
<b>Ramon Torrent</b>	
■ <b>Agenda</b>	
Book Review	77
Webs Review	81

# Presentation

The audiovisual industry in Europe has been protected as part of the so-called "cultural exception" since the laborious Marrakech agreements of 1994 which gave rise to the GATS (General Agreement on Trade in Services) in the heart of the new World Trade Organization (WTO). In the new framework of trade liberalization, the European Union acts internationally as a cultural body to ensure a system of exceptions for cultural and audiovisual services that was also adopted by a large majority of Member States. Today, with the ten-year period scheduled for renegotiating the agreements drawing near, the issue of cultural exception is more significant than ever, not only in Europe but around the world, where it can be considered the great issue of the cultural agenda for the 21st century.

Issue 14 of *Quaderns del CAC* is dedicated to helping situate and assess the terms of the issue both with regard to Europe and in direct relation to general discussions going on around the world. We have brought together a highly qualified group of researchers and experts in the field to address the topic. From France, Divina Frau-Meigs outlines and reviews the process of negotiations before and after Marrakech. The next set of works contributes information on the issue and particular views of approaches closely linked to the different realities of various places. These works include Ramon Torrent on the situation in Catalonia, Pierre Sauvé on Canada, Dima Dabbous on Lebanon and the Arab States, Stuart Cunningham and Terry Flew on what is happening in Australia, Laura Màrquez on Mexico and Mira Desai on India. The monograph closes with collaborations from two internationally recognized experts in trade liberalization – Miguel Rodríguez Mendoza, former deputy director-general at the WTO, and Pascal Lamy, Europe's Trade Commissioner.

Josep Gifreu  
Director

# "Cultural exception", national policies and globalisation: imperatives in democratisation and promotion of contemporary culture

**Divina Frau-Meigs**

■ *This article examines the doctrine of cultural exception, its crisis in the GATT controversy of 1993 and the consequences for France and Europe. It analyses the diplomatic and public mobilisation in reaction to the event and a semantic drift from use of the term "exception" to that of "diversity". The crisis experienced by the cultural exception is shown as having had a positive throwback in the promotion of contemporary culture and a more vigorous democratisation of European cultural industries, in addition to awareness of the weight of film and audiovisual works in identity and identification.*

*Future strategies for the preservation of cultural diversity are examined in the context of globalisation and technological developments. Among the most fruitful are those which aim to resolve the tensions between globalisation and media, format and content pluralism; welding a common front between those advocating diversity in Europe and other regions in the world.*

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## **Introduction**

A pithy expression, which has the benefit of being concise and the inconvenience of being ambiguous, "cultural exception" aims to legitimise the regulatory and financial intervention of public authorities in correcting international distortions resulting from a market economy. The term is firstly applied to films and secondly to audiovisual works, and consists in the application by Nation States of measures to support local creation and production, particularly in Europe. One of the major cultural facts of the post-WWII era is thus taken into account: the utilisation of the media for politics of identity (with the corresponding utilisation of fiction for soft symbolic propaganda). The term is now understood as a political measure seeking to preserve the public domain and to favour cultural diversity and democratic pluralism. This has not always been the case: at its origin in 1993 it served to oppose two camps, the United States against the European Union (and France in particular). What is striking however is the late emergence of the debate and its relatively short duration, May to December 1993, compared to the rest of the GATT process. Was it in fact a sudden burst of national conscience? A hardening of approach by countries in direct competition? Or a profound socio-cultural schism, that continues ?

## **1. The crisis of 1993: the first post-cold war cultural confrontation**

The Uruguay Round multilateral negotiations bearing on deregulation of international trade, began in 1986; they were scheduled to conclude in 1990 but were not closed until April 1994. 117 countries representing the partners of the

*General Agreement on Tariffs and Trade* (GATT) were included. Installed after WWII, this agreement provided for rounds of negotiations, each round including new sectors to be liberalised from international customs restrictions. Uruguay put services and intellectual property on the table.

The debate on "cultural exception" is one of the first post-cold war confrontations to have tested the alliance between Atlantic countries. And it is perhaps for this aspect that it will be remembered. The post-cold war had not in fact questioned the political, strategic and military prominence of the United States; however a tentative resistance to American domination can be discerned in the diplomatic and socio-cultural axes. The "cultural exception" is an example: it is a strategy of contained resistance, less against a roughshod America than against a seductive America, the country of HHMMS, the "Harvard and Hollywood, McDonald's and Microsoft Syndrome" (Joffe). It represents the first real conflagration between the idea of globalisation and that of Americanisation.

The debate's hesitation in declaring itself is without doubt due to Europe's difficulty in presenting an united front at the time (it was engaged in discussion on terms of governance, entry of new members, details of single currency etc) and taking a stand as non-American whilst avoiding anti-Americanism. The situation of dependence and expectation with respect to the United States certainly slowed its reactions, though legitimate, when having to defend certain national values and structures of distributive justice menaced by market liberalisation. By the rejection of non-European values carried by the American project, European identifiers are thus stamped negatively in the cultural exception: a controlled market, an affirmative role for the State, a individualism dosed with social welfare and public service, a universal vision of human rights – effectively concepts issued from a world vision inherited from catholic rather than protestant religiosity, though secularised in France's case (Frau-Meigs 2001; Venturelli 1999).

### **1. 1 The camps and their arguments**

Two camps were in opposition in May 1993 subsequent to the French standpoint of "cultural exception", refusing the inclusion of cinema (and to a lesser degree audiovisual works) in the list of products and services to be "liberalised":

- "Free-traders" (or hyper liberals from the European point

of view) who favoured total deregulation of protective policies championed by the United States (but not alone);

- "Exceptionists" (or protectionists according to the United States) who wanted the maintenance of national industries without however hermetically sealing their borders. Their champion was the European Union, propelled by France and supported by Canada.

According to the exceptionists, countries have the right to conduct national policies aiming to support domestic cultural industries. They thus wish to maintain public aid strategies established for art and culture, with an extension to take into account cinema, art's last-born. They are not however in favour of an iron curtain, because they recognise, pragmatically, their dependence with respect to American collections and catalogues and they are not opposed to technical innovation or economic evolution.

Economically however, the exceptionists consider that the global market in question is a false market, dominated by a small number of multinationals steered by the United States (or whose principal shareholders are American pension funds). Certain even denounce the reality of American protectionism, a country which imports less than 1% of worldwide cinematographic production. Culturally they are also against the perception that cinema (and audiovisual) is a simple entertainment industry, seeing it instead as an art, a heritage.

The Free-traders, on the contrary, consider that cinema is entertainment, at heart an industry in the same way as the bicycle or card games; they reject any idea of protecting this industry, arguing from the standpoint that they themselves have no concerted federal policy concerning communication, information and culture. And there is indeed no ministry in the United States responsible for these sectors, which are instead regrouped under the Ministry of Economy and Trade. With neither ambiguity nor soul-searching then, they request the abrogation of all customs restrictions and state subsidies for these products.

### **1.2 Stumbling blocks**

Several public aid mechanisms lay at the heart of the 1993 crisis, which explains the unconditional nature of the confrontation between the USA on one hand and France and Canada on the other (but the European Union as a whole was also concerned). France has had, since 1948, a

law on cinema subsidisation. This law created a tax applicable to each person going to the cinema (added on to ticket sales price). Taxation revenue is paid into a state-managed fund and trickled down to French film producers. In addition, from 1958, under André Malraux, cinema was attached to the Ministry of Culture, which demonstrates that it is not considered an industry but rather an art, not as a means but an end. Cinema has also benefited from the implementation of "advance on takings" which is a zero interest loan (repaid only if ticket sales are sufficient).

The 1993 confrontation launched by the United States concerned these measures, seen as a violation of free-trade and as a state subsidy infringing fair competition. America considered that American films (and thus American corporations) were paying for French national cinema.

Other mechanisms aggravated America, in particular broadcasting quotas, applied principally by Canada and France but also (in a non-official capacity) by other European countries, especially since the October 3, 1989, "Television without frontiers" directive. Implemented by the European Community, the directive, and especially sections 4 and 5, provide independent production and programming objectives "when such is obtainable", weighted in favour of national programmes and European (co)productions. Indicative quotas of 50% are given, applied depending on the country (sanctions however are not imposed for non-implementation).

America considered the measures overly protectionist and an obstacle to market penetration of their programmes in national broadcasting. They adopted a radical position with three rallying cries: application of the non-discrimination principle (free market access, implying suppression of a quota system), national status (American firms and programmes should benefit from the same aid as that allocated to national firms and programmes) and they added a Most Favoured Nation clause (granting all nations the most favourable advantage already granted to another nation, in order to multilaterally apply clauses which had been agreed bilaterally).

### **1.3 Negotiation results: calm after the storm**

A last minute compromise was signed in Marrakech in 1994, which solved nothing. The agreement relegated cinematographic and audiovisual productions to the

"services" list, to which GATT norms apply. However, provisions for services allow all sorts of departures from the ordinary GATT rules. The compromise is thus a halfway house for principles drawn from exception (French position) and differentiation (European position). Europe had finally opted for the idea of exemption – allowing services to avoid certain constraints. The absence of decisive agreement signified that the European Union was not obliged to implement liberalising initiatives and that cultural policies could continue to be based on subsidies and quotas. What is more the "Television without frontiers" directive could be applied; it had been reinforced moreover by the arrival of new media (cable, satellite, TNT). Europe thus preserved its view on cultural products and avoided constraints, keeping open a self-steered approach to free-trade.

Use of the term "services" also demonstrates an unwillingness to tackle the issues of what exactly are audiovisual works (films? documentaries? studio broadcasts? games?) and their national appurtenance (based on language used in the work? the director's nationality? filming location?). Supple and scantily defined terms were kept, so that each country could interpret them in their favour. This allowed the European Union to maintain its standpoint, namely that differentiating provisions are authorised with respect to film and audiovisual works, disposing of cultural nature they are not ordinary commodities services.

The compromise's fragility came to the fore some months after the GATT agreements, in the context of the *Organisation for Economic Cooperation and Development* (OECD) a grouping of thirty of the most developed countries. New conflicts emerged with respect to the *Multilateral Agreement on Investments* (MAI) which confirmed the hardened attitude of the two camps. The OECD proposal was less global than GATT but still as liberal: it allowed companies from different Member States to freely invest in other member countries, without preferential treatment for local companies. All sectors of a country's economy, without exception, were to be opened to investors. Cash advances, preferential rate loans, tax bonuses, had to be abandoned as well as all other national policies designed to support production. Above all, MAI, contrary to GATT, provided financial sanctions for recalcitrant nations. Applied to cinema and television, the

MAI norms would have spelt the end for different cultural policies and state aid mechanisms in European countries and Canada<sup>4</sup>. The MAI agreement capsized, following massive rallying by professionals and political personalities. Some countries had opposed strong resistance and six members (Belgium, Canada, Spain, France, Greece and Italy) had obtained the exclusion of cultural products from the agreement.

## **2. Mobilisation during, and since, 1993**

Since 1993, free-traders and exceptionists have entrenched their positions. Arguments have crystallised, and been extended, feeding diplomatic and public debates. It's more than the relationship between art and money, the cultural exception touches deep issues of identity, opposing France and the United States (Frau-Meigs, 2001). Since 1993, a certain drift has occurred, with the double realisation that globalisation is the result of market forces, but that it must also be incarnated in a societal vision. In this new context, exception represents less a combat between two hegemonies (American versus European) than a need for distinction and affirmation of minority and regional representations of identity, affecting all countries of the world.

The debate is characterised by the telescoping of the two argumentative structures which came into opposition and which have declared themselves incompatible; they are based on professions of faith more than on confirmed data, with antagonistic postulates referring to the very imperatives of civilisation. A rhetoric of diversity is opposed to that of prosperity through technological progress. Refusal of uniform content and standardisation is opposed to rejection of nationalist protectionism. Everything centres on a common object: cinema, and in the name of liberty, which is the base value shared and claimed by both camps. This sometimes leads to reversible arguments, casting a shadow of incoherence and a risk of dissolution.

### **2. 1 Diplomatic mobilisation: talking at cross-purposes ?**

In both cases, positions adopted have been extreme, no doubt to stimulate discussion and promote compromise. In addition to European market access, in 1993, the American

objective was twofold: bring a credible menace to bear on those countries which practised public and private aid, such as France and Canada; pressure other countries to dissuade them from adopting this type of policy, such as countries in transition in Eastern Europe, or Asian countries. With respect to Eastern Europe the United States would without doubt have been satisfied with the establishment of a interim phase of aid suppression, for instance a promise to "freeze" practices in the process of establishment (Gournay).

Diplomatically, the strategy was bilateral, differentiating between countries. Different types of country were thus targeted: France and Canada for quotas inscribed in a stated public policy; other European Union countries applying the "Television without frontiers" directive; other GATT countries who possibly would imitate Europe. Opposition was thus a technique of dissuasion, in particular for countries which wished to be accepted in the WTO, such as Eastern Europe and Asia (especially China), two market zones which interested USA because of the absence of a national cinema and audiovisual industry capable of rivalling Hollywood. With decisive Manicheism all national aids for production and broadcasting were declared the worst of evils. Taking France and Canada as scapegoats, quotas were labelled the worst example of bad commercial practice, an attack on free competition and a perversion of freedom of expression.

Insofar as European and Canadian objectives were concerned, it was necessary to show that that they were not opposed to market liberalisation (contrary to what the media had suggested) but that liberalisation could not occur without taking into account different regional contexts and national expectations. Their opposition was thus one of demarcation. Economically, it consisted in protection from an overly powerful and fast invasion by American cinematographic and audiovisual products. Politically it consisted in affirming their autonomy and their difference with respect to the United States. To the Manichean American rhetoric Europe opposed a nuanced approach, in which audiovisual works and cinema, as art more than industry, could find a safe harbour from the overbearing law of supply and demand.

European countries wished to demonstrate that they were open to negotiation, but not under the draconian conditions

stipulated by America. The level of concessions to make varied for individual countries within the Union – certain Member States having varied and complex aid formulas, others with simple, unstated principles. The difficulty was ensuring that disagreements within the Union did not become more pronounced, hence the prudence shown by Member States to preserve a certain ambiguity as to the notion of exception (and proposition of alternative formulations, such as differentiation or exemption).

European objectives can thus be seen as symmetrical to American objectives: international competitiveness, trade balance, preservation of employment, development of cultural industries, decentralisation of artistic production modes. Ironically, the United States was for a long time alone to proffer these arguments; they thus appeared as trying to defend a position of strength, which is why a certain anti-Americanism was raised, the impression being that the USA refused to others the advantages they allowed themselves. The only dissymmetry – but it is one of size only – is that for European countries the departure point is socio-cultural whilst for Americans it is economic. These positions a priori as to the nature of media production irreconcilably opposed those who viewed cinema as cultural capital and those for whom it was purely market capital. For France (and to a lesser degree Europe) there is a separation between the cultural and commercial spheres, which America denies, refusing any debate from a cultural perspective.

## **2.2 Mobilisation of public opinion: a question of identity**

French and European public opinion has been firmly implicated in the cultural domain, where the formula of "exception" had a large media impact, to be either disparaged or raised as standard bearer. Several different actors contributed to the debate, such as directors of media-orientated companies, trade union and professional organisations (ADAMI, SACD, PROCIREP etc), politicians, intellectuals, etc. Positions adopted were very well defined, opposition fierce, both during negotiations and for a long time afterwards.

The exceptionists, with spokesmen such as Jack Lang or Daniel Toscan du Plantier, claimed a certain number of rights: the law of supply and demand is not enough to guarantee diversity; the means of representing a country's

identity cannot be left to a third party; defence of pluralism is a form of defending freedom of speech; creative works are not just a commodity like any other; each population has the right to develop its distinctive culture; creative freedom must be plural and pluralist. Consequently nations have certain responsibilities: public authorities have the duty of compensating for market extremes; Governments are authorised to protect media industries because of the greater financial risks they run; affirmative action measures (i.e. quotas) aid in reducing the national handicap as against Hollywood.

The free-traders, in particular through Jack Valenti, Chairman of the very powerful Motion Pictures Association of America (MPAA), formulated criticism dictated more by pragmatism and an economic logic: cultural exception is an elitist and backward looking approach; protectionism is a contravention of freedom of expression and consumption; State implication in culture does not foster talent and harms art; the "cultural exception" favours the development of an artists-in-the-unemployment-line mentality; it constitutes a block on competition and a perversion of the market; refusal to reduce costs menaces living standard improvement for the entire planet; protectionism's inefficiency leads to wastage of government funds; technological determinism will undo national policies with the effects of digitalisation (inevitably leading to dissemination of American products).

Since 1993, bowing to public opinion, the issue of national identity has been at the heart of the exceptionist debate, with a semantic (and diplomatic) drift from the notion of exception towards that of diversity: means of representation and the imperatives of imagination appearing as the tools by which a nation could gain and propagate an image of self and ensure social cohesion. Audiovisual and cinematographic works contribute to cultural socialisation of individuals; acculturation by solely American productions cannot respond to this need for identity anchorage. The debate is concerned less with the quality of the artistic production – the perception of the cultural exception as an opposition between high brow culture (French) and cheap popular culture (American) – than with the necessity to take into account the national population's needs for insertion (a point forwarded more by Canada than by France).

The most convincing argument in this respect is that of cultural diversity as firebreak to a homogenisation of world

vision by American domination, effacing national asperities, pluralism of viewpoints and favouring the smallest common denominator. Such reductionism being particularly relevant for children and adolescents, the target-audience in the United States' leisure policy, in particular through cinema and televised series (Frau-Meigs 20003a). Another argument gaining ground is that which favours a semantic displacement from the notion of exception towards that of diversity: it encourages Nation States (and the European Union) to support domestic minority cultures hitherto unrecognised, either regionally (the case of Catalonia in Spain) or with respect to ex-colonies (Great Britain with its Indian and Caribbean minorities, or France with Maghrebi and African minorities).

Free-traders have replied to this policy based on identity by denouncing a retrograde and fearful nationalism, close to jingoism and cultural isolation, a nationalism which could but condemn a country to decline. More subtly they intimated that a vital culture has no need to defend itself: if it does resort to defence, it's a sign of weakness, powerlessness. The newer argument advanced has been that a policy of "cultural exception" is a hindrance to the international expansion of national products (especially French). This is what explains the latest developments to date, fuelled with declarations by Jean-Marie Messier, then Chairman of Vivendi Universal, in December 2001, at New York: "The Franco-French cultural exception is dead" . He went on to add his own definition of diversity: "We are now in a period of cultural diversity. What does that mean? It means we must be both global and national. Vivendi's interest is to be both a major American player and to have Canal-Plus and Studio Canal as pillars of the French movie industry" (*New York Times*, 17/12/2001).

The controversy caused by Messier's bold statements well marks the problem of the semantic drift from exception to diversity: it could provoke a weakening in exceptionist positions over the long-term. However it presents the advantage of chasing away the impression of elitism and deflects criticism: it's now no longer just France that is putting a spanner in the works of the WTO but rather Hollywood which is blocking all other countries' expression of cultural diversity.

### 3. Application of the "cultural exception" (cinema and television)

Though the two camps confronted each other in the domain of rhetoric, they have also clashed in terms of actions and solutions adopted. To interpret economy or culture as a means or an end is a form of acquittal, the better to confront the other on his own territory, convince or vanquish. The cultural exception is from this point of view perhaps more the "invention" of an irreconcilable difference than a real opposition, insofar as the terms of the debate remain the same and reflect western internal tensions: globalisation is an Americanisation *and* a westernisation of the world. It does however reveal market functioning when left to itself: a tendency towards duopoly, with two entities asymmetric in terms of power but which can offer a certain resistance to the other, and thus justify the system as a whole. Parallel to HHMS and their intra-American functioning (Harvard vs Stanford, Hollywood vs Broadway, McDonald's vs Burger King, Microsoft vs Apple), the European Union emerges as the second asymmetric entity in the US/EU duopoly.

Nevertheless the deep-rootedness of the asymmetry is to be found in the past, when specific choices were made. What underlies the conflict are the cultural policies implemented by Nation States after WWII (or even before in the case of the United Kingdom). With the decline of private patronage, public institutions undertook fostering of the arts, practicing a policy of "State patronage" (Gournay 17), which is to be compared with that of the welfare state. It indicates a weakness in the market: audiences are not capable by themselves of funding art and performance. More especially the case with contemporary works.

The hidden dimension of the "cultural exception" thus appears more clearly: over and above conservation of acquired heritage, it is a method of valorising contemporary culture. The fundamental concern is the defence and promotion of contemporary art, whose vitality is essential for the future dynamism of a culture. Any interruption in the process of artistic creation, however localised and reduced, excludes an entire generation of artists and disaccustoms an entire generation of audiences from the rituals of going to the cinema or viewing national or international performances. Germany and Italy, whose cinematographic production atrophied during the 1980's and 90's, is a striking example.

The dangers of such a cultural blank are well-known: on one hand a destructive anomie, on the other a fearful and sectarian introspection (Wieworka). In both cases the social cohesion of a country suffers. In this respect the debate on cultural exception is a fruitful one, if not experienced as a regression or a perversion but rather as a sign of health and willingness to recover vitality. Its merit is to place contemporary culture firmly on the agenda and to force European countries to democratise their conception of culture – considering it less a high quality production than a federative creation by all sectors of the population.

### **3.1 The range of aid policies**

One of the interesting secondary effects of the debate has been to prolong democratisation of culture, a process begun with efforts to open museums and libraries to the general public, and continued in the domain of audiovisual works and cinema (with recent extensions towards publishing and records). European governments have been relatively slow to integrate media industries, analogue and digital, in their cultural strategies. The consumption usages of the general public have only been taken into account since the 1980's, partly because the audiovisual sector was state run and thus only placed under the microscope with the advent of private competition. The interdependence between cinematographic and audiovisual production augmented during this period, television serving as financial backer and secondary market for cinema distribution.

Since then, efforts have been made to improve radio and television programmes and to use them for cultural objectives, hoping that they will have repercussions on the appreciation of other arts, as shown by the creation of the Franco-German channel, Arte. Almost all over Europe (including central and eastern Europe with countries such as Slovenia, Czech Republic, and Hungary) cultural policies have been maintained, or even established, to preserve home-grown cinema production. Automatic aids in addition to selective aids have been provided from public coffers, even in countries outside the enlarged European Union, such as Norway or Switzerland. In France the most recent aid package consists in obliging television companies (public and private) to support national production, by channelling a part of their profits into film production or pre-purchase for broadcasting.

Side by side with national aid, the great innovation of the 1990's is the intervention of European federal organs in cultural policies. European institutions have mobilised to favour the decompartmentalisation of the common market and give it a more viable scale. The European Union renewed its "Television without frontiers" directive in 1997, maintaining quotas, whilst its revision of 2002 legitimised them once again, not without some internal bickering. Federal public service audiovisual corporation bodies have also been established with a redefined assignment to protect cultural pluralism and diversity. Since 1988 the Eurimages programme has constituted a support fund for the making of co-produced European films, necessitating the involvement of at least three countries. Since 1990 the MEDIA programme (to encourage the development, distribution and promotion of European audiovisual works) has been concerned to provide financial aid to distributors in order to facilitate the circulation of national works throughout the community and further afield: aid in translation, dubbing, printing, sub-titling, copying, advertising, establishing relations with other distributors and broadcasters (cinemas and television) etc. After two initial phases (MEDIA I, 1991-1995 and MEDIA II, 1996-2000) it is now in its third phase (MEDIA III, 2001-2005).

These measures seek to implement at a practical level the lessons drawn from American domination of the production and broadcasting market. This domination in general can be explained by Hollywood's industrial production, with multiple teams formed around the single product: the film. Such an approach allows rotation of teams and talents. The low costs in the export market are due to programme profitability in a domestic market counting 260 million consumers. The existence of filmic collections and a catalogue policy (in particular with reference to televised series, planned over at least three years) is also very attractive to television channel broadcasters. Cinema benefits moreover from an international distribution network, constructed just after WWII, when Europe was still in a process of recovery and lost control over image flows.

## **3. 2 The present state of cultural industries: a real revival, but to be confirmed**

### **3. 2.1 The European perspective**

The fruit of cultural policies established in the early 1990's ripened a decade later, the upswing occurring towards 1995, as if the GATT crisis had spurred on the exceptionists. Recent reviews demonstrate a strong growth in European film productions, but it remains mitigated, in part because of the economic crisis and the burst dot.com bubble, which had also speculated on leisure and entertainment strategies. The cinema seems to benefit more than television from the "cultural exception", which is in line with its privileged status in Europe and especially in France.

Cinema, film production in the European Union is on the rise since 1995 (625 films in 2001). The increase in volume is above all due to France, followed by Germany and Spain. In France the resurgence has been produced in films known as "French initiative", namely entirely or mainly produced by France. The Spanish growth can be principally explained by Spanish dominated co productions. The drop for the United Kingdom is a result of the decline in the number of productions backed by North American capital filmed on British soil. Central and eastern European productions (countries scheduled to join the European Union) have also shown to be positive in 2001, with the highest volumes registered in Poland and Romania.

In terms of distribution, the number of screens has continuously risen since 1995, especially in Spain and in Great Britain; but the same cannot be said for eastern and central Europe, despite the growing impact of multiplex cinema construction. As for audience levels, they have grown swiftly (more than 10% in 2001) especially in Germany, France and Spain. Countries in central and eastern Europe have also shown good results (Czech Republic, Hungary) or even spectacular (40% in Poland). Audiences tend to show a preference for local productions, which has led to an increase in national market share (41% for France and Poland, 19% for Italy, 18% for Germany and Spain). Conversely, American film market share has dropped to 64%, its lowest level since 1995 whilst for European films the average is 32%, with a confident expansion, partially due to increased audience levels for European films outside national markets. The United Kingdom however remains the biggest European film exporter, in particular through co-productions with the USA. In keeping with these figures, European film audience levels in the United States have increased by 37% in one year

(largely thanks to Spanish and French films).

Public aid to the European industry developed by approximately 13% between 2000 and 2001, the amount of aid between 1997 and 2001 increasing by 45% (i.e. 10% yearly growth). France is the only country to have represented more than a third of total aids and the five principal markets (Germany, United Kingdom, France, Italy and Spain) contributed approximately 80% of aid distributed. Since 2000, the French have seen return on their investment in cinema. More than 190 million tickets, compared with 150 million in the 1990's and more than 50% of French films in the box office (compared with 30% and 40% in previous years). Even in the American market, French productions have earned 30 million dollars (compared with 6.8 million in 2000), with the good performance of films like *Amélie* (Jean-Pierre Jeunet), *Closet* (Francis Veber), *Under the Sand* (François Ozon), *Widow of Saint-Pierre* (Patrice Leconte), etc.

Television, market trends show that the inclination to broadcast European works (national or not) varies considerably according to the channel (speciality channels having difficulties in respecting programming objectives). When they manage to comply with European quotas, most channels do so thanks to broadcasting of national works: national fiction now successfully dominating prime-time, which seems in conformity with audience expectations as to identification. American programmes no longer occupy the privileged position which was theirs during the 1980's, but remain very significant if programming is taken as a whole. Since 2000, total hours of American fiction imported is down, but this seems to be compensated for by an increase in broadcasting of transatlantic co productions or international co productions. New speciality channel programming tends to favour American works. Above all it has promoted an inflation in televisual right acquisition costs benefiting American distributors: rising from 1.7 billion dollars in 1993 to 4.4 billion in 2000.

European circulation (both televisual fiction or cinematographic works) between European countries has remained weak, almost inexistent (in particular with the United Kingdom). The most striking phenomenon in terms of Europeanisation of programming is the success of game formats, with the possibility for the same formula to be adapted from one national market to another (the example of Dutch company, Endemol's, *Big Brother* is historic in this

respect). Though these adaptations function for flux programmes, the same cannot be said at all for fictional formats, even when they have been successful in their country of origin. The distribution of works from central and eastern Europe practically does not exist.

With respect to the financial situation experienced by the audiovisual sector, the emergence of an European independent production sector remains a difficult objective to achieve. Vertical integration tends to be the norm, with more than half of the fifty foremost European television programme production companies (excluding cinematographic production) strongly tied to broadcasting companies. Though their operating receipts have grown from 6.5 billion Euros in 1997 to 10.4 billion in 2000, their margins have tended to slim down (profit margin falling from 4.4% in 1997 to 0.6% in 2000, equity return margin dropping from 27.7% in 1997 to 3.2% in 2000). This deterioration in finances has particularly affected televisual fiction production, which is now at a very similar level to cinematographic or animation production, where profit margins stagnate at more or less 0%. In addition, the crisis in the advertising market and digital clusters risk further affecting production companies and playing into America's hands.

Even though it is difficult to evaluate the implementation of the "cultural exception" throughout the European Union, several trends have emerged: a national and identifying preference when production allows such (which legitimates quotas a little); the emergence of productions in western European countries (notably Spain); and in the extended European Union and outside Europe (which demonstrates a semi-failure in the American policy of dissuasion), the privileged position of cinema in relation to audiovisual (which reflects the preoccupations of the "cultural exception"). The French standpoint on "cultural exception" is maintaining itself, including in its aim to protect world cinema: French financing of foreign films has no requirements as to language and creative control is left to the directors (David Lynch, Pedro Almodovar, etc), contrary to the Americans who cut a protectionist figure without however protecting their artists. But the French relative disregard for the audiovisual sector, which is nonetheless a strong financial backer and broadcasting vector, raises worrying questions as to the defence of diversity and pluralism in France, as in Europe.

Nevertheless the drop in American or English film importation in correlation with a certain rise in co productions with Hollywood could announce a long-term trend: a thin veneer of diversity to disguise a subtler or more surreptitious homogenisation project. If action films are heavyweights of the mass international market, whatever the country of origin, other films must target more specific audiences, by niche or nationality. It is in this double market that France and Europe wish more share, with compromises that could signal stylistic, rhythmic and narrative choices inspired from American formulas. International cooperation finds few alternative strategies to the United States, targeted because of the richness and depth of its market. The weakness in the European or French approach may be pinned on the cumbersome multiple or plural agreements (European projects requiring the collaboration of at least three countries). The poverty of exchange between national cinemas, including American, when contrasted with what could take place in the 1960's-70's, between France, Italy and Germany, remains troubling.

### **3. 2. 2 The American perspective**

The United States seems to treat culture with indifference, but the reality is far from it. Contrary to popular opinion – cultivated by the Americans themselves – their country encourages a hybrid patronage between public and private support: the tax benefits associated with foundations or with donations are public aid disguised through tax relief or exemption. It was thanks to this system that independent cinema survived until the end of the 1980's (at which time tax benefits were annulled). Even in these conditions, at a federal level, the *National Endowment for the Arts* was founded in 1965, which although not financing cinema does not exclude it from aid granted (especially for art documentaries). What is more, though cultural practices for the arts don't seem steered by Federal Government, it is because politically this organ has little calling or legitimacy to do so, which is not at all the case for State bodies and local communities, which are the strongest links in American cultural identity. Financial support for cultural projects thus does exist but it is decentralised and not subject to nationally measurable systematic review. It is the municipalities (Los Angeles, New York, Denver, Philadelphia, Chicago etc) who are most active in cultural support, with

however the addition of federal aid - diffuse enough to go unnoticed, be almost invisible, especially since Hollywood tends to absorb general attention.

Ideologically, since the end of WWII, the United States has conducted a cultural war on two fronts: broadcasting of symbolic propaganda through media fiction; the information revolution as contemporary myth of total independence, according to which history stands still, there being no more tie between the world of labour and that of capital. Inoffensive expressions such as "free flow of information" or "freedom of the press" are in fact code words which express the vital importance for Americans of exporting their cultural products (Schiller). Since 1946, under the aegis of William Benton (under-Secretary of State), America seeks to nourish the expansion of its press agencies, its films and its means of communication, just so many more strategic tools in its foreign policy. Material assistance to numerous countries after the war helped American implantation on the terrain, at just the time that Europe withdrew from its colonies. This implantation has been reinforced by the establishment of the powerful international organs that direct globalisation: the United Nations, the International Monetary Fund, NATO, and GATT. These organs have universal aims but can also be utilised in propagating American interests whilst serving certain national interests, little inclined to turn against the USA, who supplies current and cultural commodities at a lesser cost (Joffe).

In consequence, the Federal Government has been highly interventionist in the media and information sectors, as illustrated by the stated policy of construction and launch of communication and surveillance satellites. Entertainment industries are part of the American political economy, and the commercial argument subjacent to their rejection of the "cultural exception" must be analysed with regard to the enormous American trade deficit: cinema is the second highest export (after arms) and constitutes a sensitive point, for both Republicans and Democrats. To avoid revenue based on taxation, development of outside trade remains politically and financially the least onerous solution for America. It's a question of maintaining levels of employment and the national standard of living (including financing of defence strategies, during cold war times and the current new cold war on terrorism). If capital seems to change hands and country through multinationals, products conti-

nue to conform strictly to American norms. The perceived risk of losing economic hegemony embodied by South-East Asia creates a menace that can only be countermanded by a symbolic acculturation through audiovisual products and by a policy of dissuasion from any temptation insofar as concerns adoption of a doctrine of "cultural exception".

The United States has also anticipated technological developments to come, in order to maintain hegemonic ambitions. Enormous financial aids have been granted by the Federal Government (Pentagon and NASA) for research and development in the sphere of information technology and digitalisation, the basis for the evolving service society. In a certain respect, America has also "excepted" information and communication in accordance with its own specific interpretation of cultural exception as a form of choice, predestination, and accomplishment of a universal destiny. This allows them to break with the past and objectify very real relationships of dependence (Frau-Meigs 2003b). Without denying information technology's society transforming ability, one should not however forget the cultural continuities induced in its use. Thus Joseph S. Nye, under-Secretary of Defence in Clinton's administration, considers that the USA is well positioned for world domination in the twenty-first century because it controls hard and soft resources, thanks to information (Nye; Nye and Owens).

The Federal Government places telecommunications and new technology in its historic domination, surveillance and control structures, irrespective of the political orientation of the party in power. It was thus during Clinton's administration that the crisis with respect to "cultural exception" took place, and it was during his term of office that the 1996 telecommunications act was voted in. The act aimed to facilitate convergence between media and information technology corporations, to favour international competition. Anti-trust laws were lifted for the cable and telephony sector; compartmentalisation between production and distribution was annulled in order to further extend competition; market interpenetration was authorised, etc. Its most recent repercussions have been the convergence between multinationals and control of the entire entertainment chain (production, directing, development, distribution, exportation...) by five big groups: AOL-Time Warner, Disney, Microsoft, General Electric and Westinghouse (Miller; Frau-Meigs 2001).

The collapse of dot.coms, despite the shockwaves, will surely aid in consolidation and reinforcement of the sector. It is this perhaps that explains the new free-trader attitude, in particular Jack Valenti, who is treading a softer line on "cultural exception", saying that he is no longer opposed to subventions nor the "Television without frontiers" European directive. The free-traders feel that Internet expansion in Europe will render the quota system completely obsolete: Europeans, including the French, won't need to go to the cinema to see their films; they'll be available and downloadable on specialised sites and most of them will be American. The general feeling is that the days of "cultural exception" are numbered.

The expansion of new technology leaves open a risk that legal measures, of which the less strict "Television without frontiers" directive is the only one in place, become inapplicable. The legal void left around "cultural exception" is perhaps just a breathing space. American retaliation measures exist, but America prefers to duck "cultural exception", in particular by the increase in transatlantic co productions. Above all the United States has no interest in appearing the villain of the story. As for Europeans they try to invest in American co productions (as in the case of Vivendi-Universal), to gain control of the distribution networks, to work at their marketing strategy and at their derived markets, with various levels of success.

#### **4. Proposals for the future: towards a positive and constructive vision**

Without underestimating Internet's potential development, and possible technological and economic consequences, exceptionists can consider several strategies in order to preserve cultural diversity. Such strategies necessitate a common front from all those defending diversity in Europe and in the other regions of the world, maintenance of dialogue with the United States and deep reaching thought as to the sense of screen culture in globalisation.

Nevertheless the first battle is internal, consisting in an uncompromising departure from the conservative and protectionist reflexes that translate the idea of "cultural exception" into exceptional culture. But neither should one fall into the trap of a more or less fatalistic glorification of a

perfect free-trade. This implies a conception of identity which does not stir up nationalist isolationistic sentiments but which inspires an awareness and realisation of the richness of untapped and exploratory contemporary culture.

The political shortfall and crisis of identity affecting European countries, has spilt a lot of ink (Laidi). Analysis often fails to take into account the role of television and film screens, which are an integral part of individual socialisation. From this stems the fact that American films and programmes generate expectations and examples whose impact is badly measured by European creative artists and policies; these expectations and examples go unfulfilled by normal national productions because they imply more circulation between high and low level culture and more democratisation of access and content (Frau-Meigs 2003a). The paradox with which we have to learn to live, is that cinema and audiovisual are vectors of both identification and globalisation, creating identity and levelling cultural differences. The real issue in this context is thus content pluralism, the struggle against a potential homogenisation of formats and formulas. But this pluralism cannot be cantoned in a cultural sphere isolated from the rest, because that would be to condemn it to a disengagement from reality, from changes and developments in contemporary culture and from the creative spark inherent in each artist.

If culture is, as is often said, the ambassador for a country, it has to know how to plead its own diplomatic cause. Image projection becomes essential in this game of influence where negotiation replaces confrontation. It could consist in valuing zones of interstice in transversal networks where individuals have multiple affiliations (to their region, their Nation State, their Federal State), a situation which already occurs in day to day life without the slightest involvement by administrative organs. These are zones of common public good, which one could call "Temporary Shared Appurtenance Zones" to slightly twist Hakim Bey's expression which conceives of virtual networks as "Temporary Autonomous Zones". This could imply closer cooperation with Great Britain and reliance on countries whose audiovisual culture is in development, such as Spain or Italy. Cinematic co productions such as those between Canal+ and Pedro Almodovar can thus serve as cultural cement between two countries whose past relations have been

strained. This is the symbolic price for democratic maturity of the European Union (and its political credibility). The "cultural exception" from this point of view is tax free, price free, and audience level free.

The welding of a common front supposes that the European Union can show its cohesion and adopt a credible regional and reticular vision which legitimates its cultural actions and sweep clean its current birth pains. This in no way excludes a progressive opening of national markets, in parallel with the development of national works. Transnational growth factors exist throughout Europe and beyond; cinema cannot escape being caught up by this development and may be federative, even a boiling-pot of European cultural values, produce a certain type of universality, without having to aim for global hegemony. Conciliating diversity and accessibility to all could have the advantage of making European productions more exportable generally, whilst acknowledging that any brutality in this respect could prove counterproductive. The fruits of measures taken under a policy of "cultural exception" should carry over several generations, that of the current decision makers – grown up on American programmes – as well as younger generations – as impregnated as their seniors – who are supposed to produce the citizens and creative artists of tomorrow. American audiovisual acculturation has been produced over a half century, one cannot then expect it to be corrected in a decade (Frau-Meigs 2003a).

Generalisation of standardised practices and cultural and technical consumer habits cannot however be confused with a universal purpose where differences can be asserted without being exclusive. "Cultural exception" in this light is not exclusive, it participates in the change and growth of globalisation, whilst trying to modify certain characteristics presented as a fatality. To a certain extent it halts governmental disengagement in a process which, despite sundry interests, is a fact for countries all over the world. France in this respect could not have imposed a "cultural exception" without the European Union and the model which emerges is indeed that of regional groupings with points of resistance and convergence in mutual tension.

Another significant step towards growth would be to convince the United States of the need for real multilateral aperture, including in the American market. The United States cannot rely upon their hegemonic status for too long

without risking the creation of political, strategic and military resistance not incurred by the end of the cold war. America's policy, privileging bilateralism, inciting competitors to cede to its conceptions of reciprocity, may be perceived as being too aggressive and incite other countries to adopt similar measures or reinforce those that exist already. The risk of an unwinding in political strength is real, as would suggest the recent events of September 11. An argument capable of addressing the United States must show that if America has gained from its "exception" the least would be to respect other countries' similar rights. A universal culture cannot be constructed without dialogue between specific cultures; differentiation is not just French, it is Italian, German, Catalan ... and even American. In fact, America has lost some of its most specific genres in globalising its media: westerns, slapstick, and musicals.

In terms of cultural policies the argument for exception should be turned against the United States: by its unique conception of patronage, what is in fact an exception is taken for a norm. At the international level, a Goliath, strong as may be, cannot beat everyone. The norm of international respect should be given effect with more equality between countries, in good governance. Especially in a context which poses the question of anti-Americanism with greater insistence, where the new cold war which is terrorism cannot be ignored. In 1993 America could take the "cultural exception" as a French or European anti-Americanism. Since 2001, a closer relationship between the European Union and the United States in terms of defence and democratic culture has been a necessity, with the Atlantic area as shared appurtenance zone. European resistance, and French resistance, is contextualised within alliances negotiated with the United States, even if the American temptation is to reply to the diplomacy of alliance with that of its own interests.

France doesn't lack reasons for reticence. Its centralist and voluntarist tradition of state sovereignty in the cultural sphere is in contradiction with governance and globalisation, which weaken France's position by giving more weight to players in the private sector and individualising initiatives (Meunier). Consecration of the American vision of universalism and the triumph of pragmatism and utilitarianism can only encourage France in refusing to give way to a system of political values misaligned with its political

philosophy. European integration and the creation of a common front can thus be viewed as a means of resistance, if France succeeds in convincing Europe to champion a model of governance which respects differences. It could then oppose the real multilateral character of the European Union to the consummate unilateral character of the United States. This is why France has held itself forward as a third voice, in international relations, and tends to position itself as leader of the opposition to hyper liberal globalisation. France has taken up the role of advocate not only for itself, but for developing countries and countries in transition.

Extension of the "cultural exception" to other regions in the world would constitute the most adept strategy for those who seek to preserve cultural diversity. The 1993 crisis soon excluded disfavoured countries from the debate, revealing to what point the question of "cultural exception" was not at all global but western. However, the French message begins to be well received outside the West: in Japan, Brazil, Morocco, and in Korea particularly. These countries present similar configurations: not opposed to the benefits of globalisation, but refusing that it detriment their own internal cohesion, cultural production or language. An awareness programme needs to be undertaken with respect to those countries not convinced of the need to preserve their cultural and media diversity, or who do not have the means to do so. Problems of development in the regions of Africa, Latin America, and Asia, establish different realities in cultural politics, risking encouraging such Member States to bypass GATT rules, which could prompt the USA to resort to aggressive bilateralism.

The French and European experience can serve as example for these other regions, and indeed the lessons learnt in 1993 have conducted France and Canada to take initiatives to concretise international cooperation in cultural industries. This implies tighter exchange between governments in diverse regions of the world, through existing bonds, such as the more than fifty Francophone countries for instance. Resulting budget lines should then be dedicated to co production and international distribution. Encouragement should be given to cinema and television projects, favouring co productions and alternative distribution networks.

Petitioned by France and Canada, UNESCO, whose vocation is the support of culture in all five continents, has

taken up the question of cultural diversity. In 2001, it produced a *Universal Declaration on Cultural Diversity*, which embodies concerns that globalisation result in homogenisation of artistic and cultural services, and the right for all cultures to have access to their own means of expression and distribution, including the most modern techniques such as digital networks. The foreword mentions that market forces are not enough to guarantee diversity and recognises that Nations have the right to define a cultural policy, and promote public broadcasting services. The return of the United States to UNESCO, announced in September 2002, risks reframing this declaration, unless America can be persuaded by the rhetoric of alliances ...

UNESCO, in particular through its *Information for All* programme, also has the remit of analysing application of the "cultural exception" to cyberspace. A *Draft recommendation on the promotion and use of multilingualism and universal access to cyberspace*, is being prepared, which includes the preservation of a global public domain and takes account of the impact of new technology on developing countries. The key is to attach industries and cultural policies to notions of "global common public good" and "global general interest" (Quéau). This implies preserving the public domain of media and communication, when it eventually goes digital, with a renewed state responsibility, not as controller, but rather as guarantor of diversity and pluralism of viewpoints and artistic creation.

The WTO started a new round in November 2001. The Doha round, inaugurated in the capital of Qatar, re-examines the question of audiovisual and cinematographic services. Relative degrees of free-trade and protectionism will once again be debated; the rules of the game mutually acceptable for all once again creating tension. Will Nation States be able to conclude the birth of a common public good that transcends national frontiers? Will they be able to make diversity their exception ?

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# The "cultural exception" in the World Trade Organisation (WTO): The basis of the audiovisual policy in Catalonia

Ramon Torrent

- *First, the article explains what the World Trade Organisation (WTO) is, what the so called "cultural exception" consists of and the treatment the WTO gives to the audiovisual sector. Second, an analysis is made of the European Community and the Spanish State participation in the WTO, as well as the role played by Catalonia in this organization. The author, then, puts forward a reinterpretation or revision of the agreements and a strategy to follow. Finally, the most important matters are summed up.*

## Introduction

The term "cultural exception" concerns the regulation governing audiovisual policies in the international trade liberalisation agreements adopted by the World Trade Organisation (WTO). Among other things, it comprises a temporary exemption to particular obligations on trade liberalisation in the sector (hence its name).

"Cultural exception" has made it possible to maintain promotional and protectionist activities involving local languages and cultures from non-mercenary points of view. "Cultural exception" is therefore the basis of projects formed to shore up the European and Catalan audiovisual sectors against the invasion of North American audiovisual content. Policies such as the European Community's MEDIA Prog-

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ram, or the establishment of European film, television and song quotas are illustrative examples. These policies have made it possible to create and/or consolidate a Euro-pean audiovisual industry that transmits the region's own values.

Partly because of these measures, European demand for audiovisual content has evolved positively over recent years. Television fiction broadcast in the main European countries (Germany, France, the United Kingdom, Italy and Spain) has changed from being mainly US in origin to largely home-grown. In Catalonia, an example of changing preferences was the replacement of US series *Dallas*, broadcast during the early years of TV3 to attract mass audiences, with locally produced sitcom *Plats Bruts*. The cultural differences this change involves are more than considerable.

## 1. Introduction to WTO. Features that comprise "cultural exception" and the treatment the audiovisual industry receives in WTO.

### 1.1. WTO.

The World Trade Organisation (WTO) is an international organisation that emerged from the round of negotiations begun in 1986 in Uruguay, within the framework of GATT (the General Agreement on Tariffs and Trade). As well as WTO and a new GATT, the Uruguay Round (1986-1993/94) also led to other agreements, such as GATS (the General Agreement on Trade in Services).

### 1.2. GATT.

GATT was created in 1945-47 as an instrument for preventing the trade wars between capitalist blocks that had created the breeding ground for World War II and aggravated the Great Depression of the 1930s. These trade

wars were fought with two types of measures:

- Monetary (restrictions on international payments and competitive devaluations).
- Directly trade-based (restrictions on imports and subsidies for exports).

The International Monetary Fund and its exchange-rate system endeavoured to set a framework and limit the use of the first type of measure, while GATT aimed at doing the same with the second.

GATT established two basic principles in order to meet its aims:

- Multilateralism
- Progressive liberalisation, including a series of exceptions.

Multilateralism referred to the "architecture" of the international trade system and endeavoured to overcome the "block capitalism" that had characterised the world from 1870 to 1945. Until World War II, the big European powers (followed by the United States and Japan) had set out their own areas of influence, with a clear risk of conflict among them.

To prevent a return to that situation, GATT was dedicated to the principle of multilateralism under the notion of the "most-favoured-nation clause". This clause makes it possible to restrict importing foreign products, but all foreign products must be treated in the same way, regardless of their origin. For example, if Spain applies particular measures (favourable or otherwise) to importing coffee from Colombia, it is in principle obliged to apply the same measures to any other WTO Member State for that product. In other words, it cannot discriminate between foreigners (although it does not have to treat foreigners the same as Spaniards).

Liberalisation of international trade is treated in GATT on the basis of the principle of progressive deregulation. This is aimed more at preventing deregulation from slowing down than promoting it. In effect, what is guaranteed is that the degree of liberalisation that each country accepts is "consolidated" within a schedule of commitments. Each State can apply a more deregulated system than the one set out in the schedule, but not a less deregulated one. This is to prevent the use of the increasingly more protectionist measures and countermeasures that characterized the trade wars of the period between the two World Wars. On

the other hand, advances in liberalisation are left to successive rounds of negotiations, the results of which are not negatively impacted.

This brief introduction involves an important political conclusion: all evaluation made about GATT and the process of international trade liberalisation (either positive or negative) *necessarily* has to be combined with an analysis of GATT's ability to:

- Limit unilateral actions by the "big powers"
- Limit the risks of "block capitalism" and trade wars
- Provide legal transparency and security to the system of international goods trade.

Any (possibly critical) view of GATT that left out this second analysis would clearly be incorrect or at the very least unbalanced.

### 1.3. WTO Agreement on Services: GATS.

The Uruguay Round developed negotiations not only within the sphere of goods trade (GATT) but also trade in services (GATS). GATS has a broader scope than GATT (which only deals with export and import goods) as it involves both trade and service providers if the provider is foreign or controlled by foreigners.

For example, not only can GATS regulate international trade in computer software, it can also determine the legal conditions of a US firm's subsidiaries selling software abroad (as a service provider controlled by foreigners).

As well as the general obligations subject to exemptions, the States that signed GATS agreed to observe specific obligations. The main two were:

- Liberalisation of access to domestic markets and
- Obligation to give national treatment to companies or service providers from other States once they had entered the domestic market.

Continuing with the example used earlier, if a WTO Member State has accepted specific obligations in the computer industry,

- It cannot discriminate between a US software firm and a domestic one
- It has to guarantee free access to the domestic market
- Once the foreign software firm has entered the domestic market, it has to receive the same treatment that a company in the same sector that was owned or run by nationals would receive.

#### 1.4. The audiovisual industry within GATS. Results of the Uruguay Round.

The broad scope of the GATS agreement, welcomed by developed countries, ran up against peculiarities in a number of particular sectors. The most important example (and therefore extremely relevant) was the air-transport industry, a sector that is strongly regulated from the point of view of internal regulation and the object of a network of bilateral agreements between States that runs totally against the principle of multilateralism. This sector was excluded from the scope of application of the GATS agreement and so, in applying what we could call the "Air Exception", the US continued to have its own internal legislation that limited foreign stakeholdings in airline companies to 25%.

It became clear during negotiations in the Uruguay Round that the audiovisual industry and cultural sector in general was another problem area that required a particular treatment within the framework of GATS. At least, that was the position of the European Community and its Member States, led by France and a number of other countries (Belgium, in particular, where issues relating to language have great political and legal/constitutional importance).

The request for particular treatment was obviously based on political arguments, i.e., the role of culture as a sector where strictly economic considerations should be subordinated to other political and social considerations. These arguments were backed up by others based on the unforeseeable effects of technological change in the sector, which made it wise to act with caution when it came to accepting international obligations that may have to be applied to a future reality impossible to predict (arguments which also supported prudence in the telecommunications sector, where deregulation negotiations were only to be concluded later, in 1997).

There were two theories about the way to obtain this particular system of treatment:

- one based on cultural **exception**
- the other based on cultural **specificity**

Cultural exception was defended by France and based on excluding culture from the scope of application of the GATS agreement. One way would be to introduce a section referring to culture into Article XIV ("General Exceptions") as per references to public morals and public order, human,

animal or plant life and health or the effectiveness of tax imposition. Another way would be to include an article specifically authorizing the adoption of cultural policy measures even if they contravened the agreement, in the same way that Article XIV ii) did with regard to security. A third way would be to include a specific annex in the GATS agreement, as per the formula used in the case of the air-transport industry mentioned previously.

Cultural specificity was defended mainly by the European Commission and the Commissioner responsible for Negotiations, the UK's Leon Brittan. He essentially argued that leaving the audiovisual industry out of GATS would be to abandon it to "the law of the fittest" without multilateral regulations to restrict it. He upheld that it was better for the cultural sector to remain within the scope of application of GATS as long as it was guaranteed "specific" treatment recognizing its particular features. However, details on what this specific treatment would involve were never made clear.

Discussions about the treatment of the audiovisual sector within GATS went on almost to the end of the round of talks, until December 1993. The definitive solution ended up being neither "cultural exception" or specificity, which both required the inclusion into GATS of a specific provision with regard to culture. The situation was solved in two ways:

- On the one hand, the European Community and Member States would not adhere to specific liberalisation obligations in terms of market access and national treatment. They did not commit to giving free general access to foreign audiovisual companies and reserved the right to discriminate in favour of companies from countries that spoke the same language and had similar cultures (e.g., French-speaking countries in France, Spanish-speaking countries in Spain).

- They would include sector-related measures in the list of exemptions to the most-favoured-nation clause. This measure would be regulated by Article II of GATS, which imposed non-discrimination among foreigners, except in cases where an exemption agreement had been reached. The official Spanish version of the agreement reads that it is possible "to maintain an incompatible measure as long as that measure is listed in the agreement concerning Exemptions to the Obligations of Article II and meets the conditions established in it". This list of exemptions effectively includes culture and, as such, the audiovisual

sector. But the Annex to the GATS agreement that regulates these exemptions (**and this is the main point**) establishes that it refers to temporary exemptions. Point 6 of the Annex says: "In principle, these exemptions should not exceed a period of 10 years. In any case, they shall be subject to negotiation in subsequent rounds of trade liberalisation".

In summary:

- GATS provisions on liberalising trade in services apply to culture and the audiovisual industry in the same way as any other service sector.

- The so-called "cultural exception" therefore does not exist.

- There can thus be no new protectionist measures in the audiovisual sector that discriminate between non-EC foreigners (favouring, for example, third countries with a same language or similar culture). On the other hand, measures that already exist should not "in principle" exceed 10 years and, in any case, be subject to future negotiation.

- What this means for the future is that no member of WTO will be able to refuse to negotiate the liberalisation of the audiovisual industry. The sector is already included in the GATS agreement and no member can oppose the US, for example, from making it a point to raise in future negotiations. It is important to remember that the audiovisual sector is the second-biggest industry in terms of export volume in the United States.

### **1.5. The audiovisual industry in GATS. The perspective from 2004.**

The results of the Uruguay Round made it possible to "preserve" the legislation of the Community and Member States in terms of the audiovisual industry. However, the "defensive" result failed to constitute a victory for the supporters of either "cultural exception" or specificity. Rather, because the idea behind GATS (in which it coincides with GATT) is not so much that of immediately forcing profound liberalisation (the process has been under way in GATT for more than 50 years and is still not finished), but creating a framework for making headway progressively. From that point of view, there is no doubt that it was the US that imposed its ideas on the Uruguay Round – the audiovisual sector should be included in future deregulation processes as per any other sector.

It is in terms of the future that the US's victory can be most

clearly appreciated:

- At the very least, the inclusion of the audiovisual industry in GATS gives the US an extraordinarily valuable weapon to use against countries or regional blocks interested in maintaining protectionist measures in the cultural sphere. In effect, every time a deregulation demand is made in other sectors where the US upholds protectionist policies (from anti-dumping through to the system of airline ownership), the US could respond, "What about your protectionist measures in the audiovisual industry?". This argument would not be possible if there truly was a "cultural exception"

- It opens the way for the US to continue to promote a strictly "mercantile" view of the audiovisual sector without other countries being able to respond that this sector is "specific".

It is also worth pointing out that the 10-year term established under GATS for cultural exemptions is set to end "in principle" in 2004. At that time, we will enter the really decisive phase of the negotiations that began in Doha (Qatar) in 2001, with the expectation that the Ministerial Conference of Cancun (Mexico) will reconfirm the agenda in the second half of 2003.

In 2004, the United States will have very solid arguments for retaking the offensive for dismantling European policies protecting the audiovisual sector. To begin with, it could demand that its productions and producers receive the same treatment as those of any other non-EC country. This equality of treatment would herald the end of preferential measures for third countries with the same language (e.g., from Spain to other Spanish-speaking countries, or from France to French-speaking countries) or a similar culture (e.g., the measures agreed to among all the countries of the Council of Europe, regardless of whether they belong to the European Union).

It is therefore clear that the audiovisual industry is set to constitute a key issue of negotiation within WTO.

## **2. Participation by the European Community and the Spanish State in WTO. The role of Catalonia.**

### **2.1. WTO: an organisation and agreements based on negotiation.**

In order to establish a future strategy for the audiovisual

system in the context of WTO and to correctly identify the parties involved, the first important step is to put paid to the idea that WTO is an organization that unilaterally imposes obligations on its Member States.

Three essential facts should always be borne in mind:

- WTO agreements, including GATS and the treatment the audiovisual industry receives, came about from a round of negotiations carried out over seven years (i.e., therefore not "surprising developments") and were ratified by parliaments (the European Parliament in terms of the European Community and the Spanish Parliament in terms of Spain) and therefore have an indisputable democratic legitimacy.

- The organizations that made these decisions within the framework of WTO were composed of representatives of democratically elected governments, including the Spanish Government. In many cases these decisions had to be ratified by parliaments and in other cases they did not (e.g., the entry of new Members, such as China), but in any case it was the representatives of the governments and not the bureaucrats of WTO itself that made the decisions.

- WTO has a nature and a working mechanism very different from those of other international organizations (e.g., the International Monetary Fund (IMF)). Two very important differences are:

- While in the IMF the Members' voting rights depend on their stake in the capital (and only the United States has more than the 15% needed to block the most important decisions), each Member State in WTO has one vote and therefore, at least from the legal point of view, India, Brazil or China are just as important as the United States.

- In the IMF, the organization's bureaucracy has a great deal of autonomy and *de facto* power. That is not the case with WTO, which is much more members-driven and where the staff of the Secretariat have much less power and are limited to more "secretarial" functions.

## **2.2. Participation of the European Community and its fifteen Member States in WTO.**

The European Union is not a member of WTO, but the European Community and its 15 Member States are, according to their respective authorities. The European Community ensures the obligations imposed under WTO agreements in the areas in which it has authority are met (e.g., the MEDIA program). In the other areas, it is the

Member States who take responsibility for these obligations.

The Nice Treaty modified the delimitation of authority between the Community and its Member States, but upheld the authority of the Member States in the specific sector of the audiovisual industry. In effect, the new section 6 of Article 133 of the Treaty establishing the European Community explicitly states: *"Notwithstanding the matters set out in the first paragraph of section 5, agreements in the area of cultural and audiovisual services...shall be the shared authority of the Community and its Member States. As such, negotiation of these agreements shall require...the common agreement of the Member States as well as a Community decision. Agreements negotiated this way shall be jointly celebrated by the EC Community and the Member States"*.

In short, despite what is commonly thought, negotiations with WTO are not "an exclusive issue for Brussels" but also an issue for Spain. The Spanish State is still a Member of WTO, it still takes responsibility for some of its obligations (in particular, in terms of services), it will continue to have authority in future negotiations and, in the long term, will have to approve (also on its own authority) new agreements that result from negotiations if, as expected, these agreements deal with issues (in particular in terms of audiovisual services) where Spain continues to have authority.

## **2.3. The role of Catalonia in WTO.**

Cases such as that of Hong Kong, an independent customs territory although not a sovereign State, have shown that sub-central levels of government cannot participate in their own right in WTO. However, this absence of participation should not be confused with the completely different issue of States being able to accept the obligations that arise from WTO agreements differently according to their different levels of government.

It should therefore be no surprise that States with a long-running federal tradition, such as the US or Canada, take advantage of this possibility of differentiating between states, regions and provinces (sub-central levels of government) with regard to the commitments undertaken by their State (federal) governments.

In the specific example of the audiovisual industry, the list of exemptions under Article II of GATS is especially signifi-

cant in Canada where, as well as exemptions valid for the whole country, there are provisions that refer only to Quebec. These provisions make it possible to apply a more favourable treatment to productions from French-speaking countries over ones from other countries. Quebec therefore has a specific system within the framework of the GATS agreement.

The conclusion to draw from these provisions is clear: there is no legal obstacle stopping the Spanish State (or the European Community in the sphere of its own authority) from giving differential treatment to Catalonia with regard to particular aspects of GATS, such as the audiovisual industry.

#### **2.4. Who is the spokesperson for the European Community and the Spanish State in WTO?**

To refine the strategy to use in future negotiations in WTO, it is important to know the roles played by the European Community and Spain. In practice, following the line of not defining authority, all matters are treated as if they were covered by the authority of a hypothetical "European Union" which is a member of WTO and to which both the Community and Member States are subject. All sixteen representations (the Community and 15 Member States) are gathered together under a single spokesperson: the highest-ranking Commissioner or EC bureaucrat present. In principle, the Commissioner and Directorate-General of Trade are responsible for all negotiations and not the different commissioners or sector-based General Directorates (e.g., for Culture, in relation to the audiovisual industry). The key person today in the Commission for all WTO-related matters, including audiovisual issues, is the Commissioner for Trade, France's Pascal Lamy, interviewed in this issue.

However, the fact that the European Commission is the only spokesperson for the Community and Member States in WTO does not subtract from the importance and decision-making responsibility of the States or the Community itself, as these will be the organizations that finally have to approve (or reject) any new agreements that could be reached in the future. The Spanish Government therefore continues to be responsible for WTO-related matters (in particular relating to the audiovisual industry) in two senses:

- As a member of the Council of the European Union,

which has to approve (or reject) future agreements negotiated in the name of the Community,

- In its own right, in that the Spanish State still has authority over audiovisual matters.

Similarly, it will be the Spanish Parliament that will have to ratify any future agreement.

### **3. Future proposals**

#### **3.1. WTO agreements have to reinterpreted or reviewed.**

Since the agreements from the Uruguay Round have begun to apply, an important number of developing countries (DCs) have made increasingly strident calls for the need to review the content of the agreements, which come down greatly in favour of the interests of developed countries. In formulating these calls, DCs often openly recognize that the very complexity and technical difficulty of the agreements led to mistakes being made with regard to content and implications, which were only discovered later.

In the discussions prior to the opening of the new round of negotiations at Doha (Qatar), it appeared there would be a clear division between developed and developing countries on the issue of reinterpreting or reviewing WTO agreements. However, that was not the case, at least in terms of the audiovisual industry. In their initial positions at least, developed countries like France and Belgium uphold the need to recognize the specificity of the sector and be able to establish a review of GATS or at least a reinterpretation of some of its provisions. In particular, they are expected to defend that the expression of paragraph 6 of the Annex on Exemptions to the Obligations of Article II ("*in principle, these exemptions should not exceed a time period of 10 years*") does not mean that, in principle, the protection offered by these exemptions should disappear at the end of ten years.

This situation clearly has positive implications: a discussion in WTO would not have to involve a general showdown between developed and developing countries. With regard to the audiovisual sector, the so-called "cultural exception" could find supporters in countries such as India or Egypt, which are sensitive to these issues. It is therefore important to think that the arguments for defending the

specificity of the audiovisual sector are similar to the ones used to defend the education sector (also covered by GATS); and, at the end of the day, involve a certain vision of the relationship between political and market powers that could be applied to many other economic sectors.

These arguments could furthermore be justified by the fact there is an air-based exception (and, in part a sea-based exception). If the parties concerned find these exceptions reasonable, why should a "cultural exception" be any different?

### **3.2. Towards orientating a strategy.**

It seems clear that, if we want to review the audiovisual system within GATS in line with a greater recognition of its specificity, it is important to move both in the direction of social movements and public opinion (which, in general, would be receptive to the idea) as well as that of the politicians involved.

With regard to the political sphere, it is essential to begin with what we have closest to hand within the framework of the Spanish constitutional legal system: the institutions of the Generalitat of Catalonia on one hand, and local authorities and universities on the other. A first target to reach would be getting the most unanimous position possible within Catalan society in favour of WTO agreements not imposing obstacles on the definition and execution of public policies in the audiovisual sector in Catalonia. The Catalonia Broadcasting Council has used facts and figures before to show how important the audiovisual sector is in our country. It could use this to get both the Spanish State and the European Community to take up this position.

There is a happy convergence of activities that involve public opinion. As indicated previously, GATS has provisions for certain protectionist measures involving cultural identities which (in principle) will disappear in 2004, when the first World Forum of Cultures is due to be held in Barcelona. The Catalonia Broadcasting Council therefore presented a proposal to the Forum aimed at debating the conditions necessary for cultural diversity in the audiovisual sector with guarantees for all the peoples of the world. To that end, the Council proposed organizing an international conference supported by all the organizations that regulate audiovisual industries. The proposal was accepted and

presented to the Parliament of Catalonia last May when the Council appeared before the current Control Commission for CRTVC and associated companies.

This International Conference of Regulatory Organisations in the Audiovisual Industry would also aim at collaborating in the spirit of the Forum and the values behind it, including cultural diversity. For that reason, we would like to propose a lively and participatory discussion of the "cultural exception" as one of the basic tenants of the new 21<sup>st</sup> century.

## **4. Summary – conclusions.**

### **The audiovisual industry and WTO**

- The "cultural exception" has made policies that promote and protect the European and Catalan audiovisual sectors against the invasion of North American audiovisual content possible. Policies such as the European Community's MEDIA program or the establishment of European cinema, television and song quotas have been possible thanks to the "cultural exception". These policies have allowed the creation and/or consolidation of a European audiovisual sector that transmits the region's own values.

- GATS is the World Trade Organization (WTO) agreement regulating international trade in services, including cultural services. The agreement, which was signed in 1994, does not establish that culture is an "exception" within the liberalisation commitments signed by the Member States of WTO.

- This means that, legally, and despite what is commonly believed, the "cultural exception" does not exist, because the provisions for deregulating trade in services as set out under GATS applies to culture and the audiovisual industry in the same way as any other service industry (finance, telecommunications, audits, etc.).

- For now, GATS makes it possible to continue to apply national and Community measures to protect and promote the audiovisual industry. However, measures that discriminate among non-EC foreigners (e.g., that favour productions from third countries with a same language or culture) will disappear, in principle, in 2004 (or will have to be extended to all countries, including the United States).

- In November 2001, WTO opened a new round of

negotiations, which will be activated in 2004, to negotiate international trade liberalisation. As the cultural sector is included within GATS, no member of WTO will be able to demand that negotiations not include the audiovisual industry.

- This means that countries interested in deregulating the audiovisual industry, such as the United States, will have very solid arguments for claiming that the preferential treatment the European Community reserves for European productions and producers be extended to their own audiovisual productions and producers. In other words, Europe will no longer be able to protect the sector.

- The application of WTO agreements would suggest that it is appropriate to reinterpret and review them. With regard to the audiovisual industry, this review could find supporters in countries such as India or Egypt, which are sensitive to this issue.

### **The European Community, the Spanish State and Catalonia in WTO**

- Member States continue to be members of WTO, together with the European Community, according to their respective areas of authority.

- Within the framework of WTO, the organization responsible for decision-making is made up of representatives of governments, including the Spanish Government. The agreements and decisions taken usually have to be ratified by parliaments (the Spanish Parliament with regard to Spain, and the European Parliament with regard to the European Community). Decisions are never taken by the bureaucrats of WTO itself, but rather by government representatives.

- In the framework of WTO, the negotiator in the name of the European Community and its Member States is the European Commission. Within this, the parties directly responsible are the Commissioner for Trade, France's Pascal Lamy, and the Directorate-General of Trade.

- However, the fact that the European Commission is the only spokesperson for the Community and the Member States in WTO does not subtract from the importance of the decision-making ability and responsibility of the Member States and their Governments, whether in their own right or as members of the Council of the European Union.

- With regard to the role Catalonia could play in the

process, it is essential to know that the obligations that result from WTO agreements could be accepted by the States differently according to their different levels of government (central and autonomous).

- States with a long-running federal tradition, such as the United States or Canada, also take advantage of this possibility of differentiating between states, regions and provinces (sub-central levels of government) with regard to the commitments undertaken by their State (federal) governments.

- For example, Quebec enjoys a specific exemption provided for under GATS with regard to the audiovisual sector that allows it to have its own policy different from that of the other provinces of Canada, and different from the policy of Canada as a State.

- The conclusion to draw from these provisions is clear: there is no legal obstacle stopping the Spanish State (or the European Community in the sphere of its authority) from giving differential treatment to Catalonia in relation to particular aspects of GATS. Catalonia could enjoy a specific and differentiated treatment in relation to the commitments established in WTO.

Translated from Catalan by Lynda Trevitt

# The WTO Doha round: what's at stake culturally

**Pierre Sauvé**

## 1. Introduction

Though it might seem surprising – as if the multilateral trade community didn't already have enough on its plate – the interface between trade and culture, a subject as technically complex as it is politically sensitive, may be on the negotiations agenda at the WTO Ministerial Conference at Cancun, in September 2003.

This is not the first occasion for similar discussions. In fact it will soon be ten years – since the curtain fell on the Uruguay round in December 1993 – that these Conferences are an implicit part of a Trade Minister's calendar.

One of the prime objectives for the Cancun Ministerial Conference will be to back pursuit of scheduled negotiations in respect of the development agenda begun by the last WTO Conference, held in Doha, Qatar, in November 2001.

Contrary to popular belief, the General Agreement on Trade in Services (GATS) field of application does extend to cultural industries. In fact, the idea that cultural industries were subject to special treatment during the Uruguay round is a legal red herring. Nothing in GATS distinguishes audiovisual production from technical consulting or provision of train services.

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Of course, this does not amount to saying that the cultural sector is not an exceptional subject, in both social and economic spheres, nor that the logic and "traditional" instruments for trade and investment liberalisation should apply to the cultural sector in a "business as usual" fashion. The fact that a only small minority of countries signing the GATS – 13 out of 105 present at the close of the Uruguay round (of which only three countries from the OECD zone) and just over twenty out of the 143 current members of the World Trade Organisation (WTO) – have agreed liberalising measures for this sector, is a sign of its evident particularism.

However, once the multilateral trade community is of the opinion that "cultural" services are commodities which can be cross-border traded and invested, it is perfectly legitimate that the Trade Ministers put the trade-culture interface on the negotiation table and declare their respective expectations for the sector on the eve of a new round of negotiations. These ambitions will certainly be diverse and contrastive, opposing the resolved offensive of some against the sometimes fearful and sectarian hesitations of others.

What can we reasonably expect from such discussions? Very little given the current state of affairs. In fact, outside of a small number of countries who some years ago initiated the first steps in a thought process which will surely extend for some time within UNESCO (as also within a parallel network of Ministers of Culture) on the constitution of a positive policy for defence and promotion of cultural diversity, the international community as a whole and in particular the trade experts working to prepare the Cancun round, do not seem disposed to consider this policy interface in any detailed or ambitious manner in Seattle. It is striking in this regard that no WTO Member State has yet proposed the appointment of a working group on

relationships between trade and culture (as was the case for investment and competition law at the Singapore Ministerial Conference in December 1996), nor even proposed the idea of an introductory declaration as to the appropriateness of including cultural diversity among the fundamental objectives of the multilateral trade system.

Culture will be on the agenda at Cancun, but undoubtedly from the wrong end of the telescope, the major focus of discussions seemingly bearing on the appropriateness (or not) of extending the range of liberalisation measures subscribed under GATS and keeping a close eye on the programme to dismantle Most Favoured Nation clause exemptions with respect to trade in services (GATS, Section II).

Is this a result to worry countries hoping to push defence of cultural diversity at the WTO? The following analysis attempts to reply to this question by emphasising the need, firstly, to widen the debate on the culture-trade interface beyond its strictly financial and commercial dimension before circumscribing the possible application of new trade rules in the sector. Such an approach would have the primary objective of conferring real political legitimacy on the idea of defending and promoting the notion of cultural diversity. It would also allow clarification of current, hazy, ideas on the subject and supply a credible reply to the suspicions of those who see in such defence an elegant veneer for cultural protectionism.

This approach would also consider the development of a multilateral instrument whose purpose could be integration outside of WTO agreement architecture. For the moment UNESCO seems to offer the most appropriate international forum for development of such an instrument.

## **2. Premises of the debate**

The question of preserving cultural diversity in a context of economic globalisation has gained an importance in recent years that would have been hard to imagine a few years earlier. It is now, on a par with environment, labour regulations, or anti-trust measures, one of the policy interfaces which will have to be taken into account for the future good functioning of the multilateral trade system and its continuing liberalisation of trade and investment.

Although exerting increasing pressure on the international trade system (as exemplified by the higher number of commercial legal disputes observed in recent years) and raising real preoccupations for the general public in a significant number of countries, it is a safe bet that the solution to problems raised by the culture-trade interface will not be solved by the trade system taken in isolation.

This claim may be made for three reasons. Firstly because culture is above all an identity resource in most societies, an anchorage point that unifies a society's different composite parts and nourishes the sentiment of belonging to a community of values, customs and ideas. As the Lalumière-Landau report observed (prepared in 1999 for the French Ministry of Economy, Finance and Industry, on what was at stake in the next round of multilateral trade negotiations), this need for identity, solidarity and thus for propinquity among the members of a same cultural community is expressed today more forcefully. The issue has become acute precisely because it is running against, in the context of market globalisation, a tendency towards increasing homogeneity in behaviour, consumer habits, and lifestyles. A careful management of the tensions provoked by this confrontation is essential. Without such management the advances in efficiency and well-being that are the fruit of a growing financial integration could find themselves threatened.

A second reason for taking account of the interface between culture and trade in a more enlarged ambit than that of strictly commercial policies results from the fact that normal market regulators do not visibly lead to a social optimisation in terms of cultural diversity. In fact, market deficiencies occasioned by the combination of a mass production economy and an oligopolistic market structure in terms of production and distribution of cultural products (in particular with respect to audiovisual products, but also in certain sectors of the publishing market) do not forcibly maintain diversity of cultures or cultural products. These failings justify, in addition, the almost universal strategy of resorting to government aid measures to support national artistic creation and creative artists.

It would be appropriate for the multilateral trade system to acknowledge this reality and to shelter a number of cultural industry aid measures from its powers of sanction, whilst at the same time subjecting the sector to rules of good

commercial practice founded on the traditional principles of transparency, non-discrimination, minimising distorting effects on trade and investment where such is possible.

A third reason to extend the debate results more fundamentally, concerning the interface between trade and culture, from the need to see the political order achieve a position of priority with respect to commerce and finance. Such political ascendance should allow the affirmation – and recognition by the international community – of the legitimacy of defending and promoting the idea of cultural diversity at both the national and global levels. It is in fact only by such prior acknowledgement (and its practical implementation by each of the Member States subscribing to this approach) that one can envisage more enlightened and productive discussions as to the appropriateness, character and limits of possible multilateral trade agreements touching on cultural industries.

In the current state of international thought on the subject, there are no reasons to believe that this dialogue can be usefully undertaken or fruitful in the context of a forum as naturally reductive as that of the WTO. It would seem then to be important, for those members of the international community who wish to defend the idea of cultural diversity, to see to it that a wider debate on these questions takes place. UNESCO, from this point of view, appears to offer the most appropriate organ for taking into account the plurality of perspectives which are surely subjacent to such a debate, and for bestowing universal political legitimacy. "Petit-à-petit" could be the watchword.

The basic problem posed by the interface between trade and culture regards the treatment to be adopted for cultural products in international trade agreements. For the time being their place in existing agreements is characterised by a very clear ambivalence. In principle treated just like any other product, they often benefit, depending on the context and the subject, from waiver or restriction clauses. The debate on this subject is far from finished and, considering the numerous disputes in this context since the end of the Uruguay round, will very certainly raise its head in the next WTO negotiations.

Two radically opposed visions of cultural products underlie this debate. One considers cultural products as entertainment products similar, from a commercial point of view, to any other products and thus entirely subject to

international trade rules. The other considers cultural products as assets which convey values, ideas and meaning, which is to say as instruments of social communication contributing to fashioning a grouping's cultural identity. They should thus be excluded on this head from the application of international trade agreements.

Neither of these two visions is honestly acceptable in every respect. Before, however, proceeding with a critique and exploration of possible reconciliatory approaches, it is necessary to briefly resume cultural products' status in international trade agreements.

### **3. Cultural products viewed as trade goods**

As trade goods, cultural products may only with difficulty be completely excluded from the application of international trade agreements. As soon as they are utilised for commercial profit and are articles of international trade, they implicate diverse and often opposing interests which can only be reconciled in an appropriate legal context.

The foremost cultural product exporter-countries would, in particular, be opposed to an exemption for such products from the legal framework regulating international commerce. Heading exporter-countries is of course the United States, for whom all cultural goods and services constitute an important exportation sector, in addition to other countries such as Brazil, Mexico, and Japan. Several of these countries have, furthermore, advanced progressive liberalisation proposals for the sector with respect to current GATS-related negotiations. These countries would certainly be little pleased to see that their exports could be called into question for regulation-free cultural reasons. Several countries to have developed a significant presence in the international cultural products market – including countries like Canada or France, who lead the struggle to have cultural industries' distinct nature acknowledged in international trade – could also be less than receptive to such a development. Even developing countries, whose cultural products circulate increasingly throughout the world, would have more to gain from a largely open cultural market.<sup>1</sup>

Furthermore, countries with an internal market unable to supply diversified cultural products and who require foreign cultural products to tender to internal demand, also have a

vested interest in an non-discriminatory access to foreign cultural production. However this access will not be guaranteed if cultural products are totally excluded from the legal context governing international trade. Even a non-discrimination principle as fundamental as that of the Most Favoured Nation clause could perhaps no longer apply in such circumstances.

Over and above these strictly economic considerations, it is necessary to emphasize that completely exempting cultural products from international trade agreements leaves the door dangerously ajar, in a legal respect, to restrictions founded more on commercial protectionism or even ideology (which are very likely to run counter to cultural diversity) than on cultural imperatives. Even an exception such as that of section XX (b) GATT, 1994, which concerns restrictions implemented to protect national treasures of "artistic, historic or archaeological value" is subject to limitations concerning its use for arbitrary or unjustified discrimination, or as a disguised international trade barrier. It would be highly surprising from this point of view to benefit cultural products with an exemption whose extent and application would be in the sole hands of the parties availing themselves of such exemption.

But if completely exempting cultural products from international trade regulations does not seem a realistic solution, this does not imply that a strictly commercial vision must be adopted. Such a vision would, on the contrary, be risky. In fact, for several years, cultural industry domination of cultural production has become more and more pronounced. This phenomenon of industrialisation and commercialisation in cultural production, though significantly widening access to cultural products, has also, paradoxically, restricted the scope of the cultural product offer to the industry's commercial standards of profitability. This could be considered a serious threat for the preservation of cultural diversity.

#### **4. Cultural products viewed as instruments of social communication**

Cultural products cannot be considered as just any other product. They are first and foremost creative works which convey information, ideas, values, a message, which call on

an individual's intellectual, aesthetic and emotive faculties. Even when they repose on physical media, they differentiate themselves from other goods in that one can clearly distinguish their physical and symbolic dimensions. The creator of cultural products will typically have copyright, signifying individual ownership of an idea or a concept, in other words – intellectual property.

With the aim of justifying state intervention in this sector, several broadly economic arguments have been put forward concerning the specificity of cultural products. Some arguments are linked to intrinsic product characteristics. One such is the argument whose premise is that cultural products should be considered differently from other commodities because they constitute public rather than private goods. The most current definition of a public good is one whose use by a particular party does not call into question its availability for others.

Other arguments are linked to market failings. The most well-known and the most widely accepted is that baptised the "externalities" argument: justifying state intervention by the fact that cultural goods producers benefit the community with freely-provided goods and services in excess of remuneration received. These non-remunerated contributions or externalities are for example the prestige bestowed on a Nation by its cultural production; the fact that a dynamic cultural production influences investment decisions and attracts tourists; or the fact that cultural products play an important role in societal integration of individuals, etc. A second argument concerns anticompetitive practices, more precisely the misuse of a position of dominance. This argument has often been used concerning the cinematographic industry to justify "cultural exception" clauses. It is emphasised that such measures are necessary in countering unfair practices by producers who misuse a position of strength in the cinematographic distribution sector to impose favourable conditions with independent cinema owners, thereby disadvantaging other producers.

But though these arguments have the merit of showing that state cultural intervention can sometimes be justified from a strictly economic point of view, it is not herein that lies the most emphatic justification for particular measures as to cultural products. The fundamental argument in favour of an acknowledgment of cultural product specificity is based

more on a view of culture valuing above all the importance, for individual and societal development, of goods which convey values, ideas, tastes and meaning. These goods constitute in some ways a form of cultural capital. Cultural industries themselves, from this standpoint, are perceived as offering "the terms and symbols which shape our thought and our discourse concerning social differences, diverse groups' needs for recognition, affirmation and negation of social values and finally the experience of social change<sup>2</sup>". On a par with education, cultural production thus constitutes an essential instrument in the emancipation of individuals, allowing the citizen which is every individual to adapt and participate in the group and community life within which he or she moves.<sup>3</sup>

This last argument, transposed to an international context, naturally leads to a preoccupation for preservation of cultural diversity. But, from the evidence, it is only through a recognition of the dual character of cultural products, as both trade goods and language of social communication, that a global solution is likely to be found.

## **5. Principles of a solution: towards a multilateral instrument for promotion of cultural diversity?**

It is not so much cultural products in themselves that create problems from an international trade regulation viewpoint, but rather the national measures concerning these products. Several different means may be considered in order that such products benefit from differentiation: a wider use of the reservations mechanism, already used in GATS, for instance. These reservations may be closed, which is to say valid for past instances only and for specific measures, or open, which is to say valid for past and future issues and for a given sector.

But the ideal solution, the only one in the long term likely to supply a response to the current dispute over the position accorded cultural products in international trade agreements, would be a specific arrangement relative to international exchange in the cultural sector. Such an arrangement would clearly set out the justifications and limits of an exception applied to cultural products whilst insisting on the need to preserve cultural diversity. Such an instrument could be negotiated in a context distinct from that

of the WTO – UNESCO could be considered in particular. As a last resort however, to reply to problems raised in a WTO context, the instrument should have a place in this organisation.

### **5.1 What could be the objectives of such an instrument ?**

Turning to diplomatic efforts, the principal obstacle consists in welding an alliance between countries sharing similar cultural policy preoccupations in order to influence the course of decisions taken in forums such as the WTO, OECD, Free Trade Area of the Americas, or the European Union. The same would also apply to bilateral trade relationships, and the promotion of an approach to international relations favouring cultural diversity.

With respect to intrinsically cultural issues, the objective should be to force recognition of the importance of cultural and linguistic diversity and acceptance of the need for differentiated treatment of cultural goods and services in international trade agreements. On top of these general objectives should be more explicitly added a reference to the freest possible dissemination of cultural products. It is necessary – avoid cultural diversity becoming too closely linked to a logic of exclusive and restrictive measures affecting trade or investment in the cultural sphere. If such were to occur this initiative would rapidly be forgotten. Cultural diversity, in fact, cannot be envisaged without an opening to products, ideas, values, production methods and distribution networks from other cultures.

### **5.2 What forms could such an instrument take ?**

Several hypotheses could be imagined, ranging from an essentially declaratory text such as the Rio Declaration to enforceable and legally binding agreements such as those of the WTO. Our own choice, excluding for the time being the hypothesis of an agreement in the context of the WTO, tends more towards a supple instrument binding on parties but not legally enforceable as such. This kind of agreement would resemble OECD codes. Such an approach would have the advantage of facilitating easy acceptance of the instrument politically, whilst awaiting transfer of its principles and terms to a WTO context.

The governmental organisation most obviously suitable for the development of such an instrument would be UNESCO,

whilst associating the technical expertise of the WTO secretariat. In addition to the fact that UNESCO is already concerned by the issue, its multilateral character and its strong presence in developing countries confer important advantages of which universality is not the least (absence of universality seriously undermined the political legitimacy of the OECD Multilateral Agreement on Investments (MAI) negotiations.

There is also of course the possibility of an international instrument that is not attached to any organisation in particular, such as one finds in the environmental sphere. For such an approach to function, it would need to count from the beginning with a large number of signatories, including a majority of developed countries. The instrument in question would have to incorporate provisions establishing a monitoring committee. This last scenario should not be dismissed if envisaging a later affiliation with the WTO.

The hypothesis of an affiliation with the WTO is without doubt the most interesting from the point of view of efficiency. But it's also the most difficult in terms of accomplishment insofar as it implicates fundamental legal provisions (Most Favoured Nation, national status, etc) and adopts a position in the context of trade negotiations confronting rival interests in a more strictly economic perspective.

Consensus in such a context would not be easy, and would only be achieved at the cost of concessions as to rigorous control over State action in the cultural sphere. These would almost certainly not be present in an out of WTO agreement. Nevertheless a WTO instrument would probably command significantly more political legitimacy from the better balance between trade rule implementation on one hand and necessary cultural policy flexibility which would probably be generated on the other.

## Conclusion

The preceding analysis suggests that in the next round of WTO negotiations cultural issues could be relatively minor. The multilateral trade community as a whole does not in fact yet seem ready to debate the culture-trade interface in a researched and balanced way, and to recognise the dual

character of cultural products as both trade goods and as instruments of social communication.

It is not impossible however to imagine, even at this late hour, that the Trade Ministers gathered next September at Cancun devote a little of their precious time to the idea of admitting, even if only for an instant, in an introductory manner, the notion of cultural diversity as one of the fundamental objectives pursued by the international community within the context of the WTO. A declaration of this type could usefully support – and legitimise – work suitably and preferably first begun at UNESCO. Everything is still possible in this respect as long as a dynamic of support for the idea can durably appear and be heard.

Despite the logic developed by this analysis in favour of an instrument anchored primarily with UNESCO, WTO Member States who wish to defend the idea of cultural diversity should still confront the requests addressed at the next round of negotiations. These requests will principally aim at the qualitative (and sometimes quantitative) improvement of liberalisation agreements subscribed, under GATS, relative to cultural industries. Since the liberalisation procedure of this agreement operates through an approach known as "positive list", WTO Member States shall continue to enjoy complete liberty in this respect in the forthcoming round. Nothing, in fact, authorises anyone to concede anything in this matter.

Having said that, the attention brought to bear on the "pre-established" agenda in the next round will require a certain vigilance from protagonists of the idea of cultural diversity if they wish to maintain a large radius of independence in their dealings at UNESCO.

Vigilance would seem necessary in the light of what the next round of negotiations could reserve MFN derogatory clauses as to audiovisual co production agreements. These departures from GATS Section II should in principle be abolished in 2004, but it might be appropriate to stall this abolishment until an out of WTO multilateral instrument has had the chance to be developed.

Similarly, as and when cultural products are governed by GATS provisions, discussions in the next round on possible subsidies and safeguarding measures provisions with respect to trade in services will directly affect future WTO treatment of cultural industries. It is thus better that these negotiations take account of such provisions' possible

effects on national cultural policy formulation.

Another area worthy of vigilance concerns the declared intentions of certain important WTO members to widen the field of results obligations prohibited under the Agreement on Trade-Related Investment Measures (TRIMs Agreement). Such vigilance seems even more necessary since these measures offer a way of putting the objective of cultural diversity into operation, whilst permitting legitimisation of stronger investment liberalisation with respect to national cultural industries.

Concerning WTO provisions on Trade-Related Intellectual Property Rights (TRIP's Agreement), in addition to the major interest that a better implementation of the TRIP's agreement by WTO members represents for artistic creation, the next round of negotiations could provide the opportunity to incorporate provisions negotiated in 1996 with the World Intellectual Property Organisation (WIPO) on copyright protection in the information age. Particular attention should also be devoted to possible implications, for cultural industry support policies, of the WTO working programme on e-business. Though the idea may seem intuitively seductive, given the technological dynamism of the sector and the growing convergence between the telecommunications sector and audiovisual products, the current state of thought mitigates any conclusions that a "laissez-faire" approach in terms of e-business is necessarily compatible with the idea of promoting cultural diversity.

Finally, despite lack of immediacy in multilateral trade system introduction of detailed competition provisions, a lack of immediacy from which the culture-trade interface also benefits, it would be useful that the WTO working group on trade and competition, which will perhaps be given a formal negotiation mandate at Cancun, devotes particular attention in future work to the issue of anticompetitive behaviour by cultural sector operators as well as the best means of remedying problems created by misuse of a dominant position in the sector.

## Notes

- 1 In this respect consult David Throsby, "Le rôle de la musique dans le commerce international et le développement économique", UNESCO, Rapport mondial sur la culture 1998, pg. 215.
- 2 SINCLAIR, J. "Media and Cultural Industries: an Overview", CIRCIT Newsletter, Vol. 4, N° 5, August 1992. pg. 3-4.
- 3 This conception is clearly very close to that promoted by UNESCO in proclaiming the "World Decade for Cultural Development".

Translated from French by William Kelleher

# From defending "cultural exception" to promoting "Cultural Diversity": European cultural policy and the Arab World

**Dima Dabbous-Sensenig**

- *In this article, I will argue that European cultural policy has important implications for culture not just within the European Union, but outside of it as well. Specifically, a case will be made that EU cultural regulation has a positive spillover effect on neighboring Arab countries, and has proved crucial for supporting Arab voices and creative talent which are often neglected, if not suppressed, by their own governments at home.*

## **Trade agreements, the EU, and "cultural exception"**

In September 1993, as part of an ongoing debate to regulate world trade and limit restrictive trade practices, such as imposing tariff barriers and quotas on foreign imports, a group of French lobbyists succeeded in placing the issue of cultural products at the centre of the GATT agenda. The Europeans, led by the French, demanded that trade in audiovisual products be left outside the GATT agreement, arguing that cultural products cannot to be equated with other commercial products. The driving motor behind this call for a "cultural exception" was based on a belief that, without imposing restrictions to check the flow of (cheap and competitive) American products onto European markets, European culture and identity would be threatened. The outcome of the dispute, though not conclusive, was that audiovisual products were to be left out of the treaty which was

concluded by the end of 1993. It is in the light of the upcoming new round of talks scheduled to conclude by 2005, that the present paper makes the case, from an Arab perspective, for the importance of a continuous and distinct treatment of culture and cultural products in world trade agreements.

## **EU cultural policy**

Although the central role of the European Community (or EC) and its institutions was initially economic (i.e., the creation of a common market), its role eventually came to include a wider range of societal goals. The growing concern about the impact that a free market approach could have on the social and cultural aspects of European society led to the inclusion of a "cultural article" in the 1992 Treaty of the European Union. This was done despite early disagreements over the competence of the EC to legislate in a sector that, "arguably...is not economic or not wholly economic in the way other commodities are"<sup>1</sup>. This "cultural article", among other things, asserts the Community's commitment to "contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore"<sup>2</sup>. The EC commitment to European culture was reiterated a few years later when a new provision, Article 16, was introduced in the 1997 amendment to the Treaty on European Union (the Treaty of Amsterdam or ToA). This article emphasises the "importance of public services generally and the ability of Member states to provide such a service as they see fit"<sup>3</sup>. The Protocol attached to the ToA concerning public service broadcasting (or PSB) stresses the importance of PSB for the Member States who maintain the prerogative to fund

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and regulate their public service broadcasting.

The importance assigned to cultural matters within the European Community, an importance which first caught worldwide attention during the "cultural exception" debate introduced during the GATT negotiations in 1993, and which increasingly manifested itself in the development of EC cultural policies in the last decade (including the regulation and funding of PSB) – is not without its problems. On the one hand, there is a considerable amount of tension between the various policies that the EC enacted. A "hierarchy" of policies within the EC exists, "with the longer established policies and those which provide legal basis for action, such as liberalisation of services, competition policy and the rules regarding state aid, taking precedence over less well-established areas such as cultural policy"<sup>4</sup>.

On the other hand, the protectionist approach to culture raises important questions about *what type of national culture* is in need of protection. As supporters of cultural deregulation have argued, and often rightly so, cultural protectionism in the name of protecting national culture and identity and countering the effects of (mostly US) "cultural imperialism" has often been premised on the existence of some sort of cultural *unity* in nation-states. Thus a dominant cultural constituency (or dominant versions of Englishness, Frenchness, Italianness, and so on) is seen to be in need of protection. Such protectionism, supporters of deregulation argue, may actually lead to an internal regulation of cultural identity that also suppresses ethnic and cultural diversity within nation-states<sup>5</sup>. As I will discuss later on, the issue of cultural imperialism when discussing Arab media and cultural policy becomes even more problematic, and can easily betray a decision on the part of regulators (mostly in authoritarian regimes) to legitimise further controls on programming and consequently to restrict political debate among citizens in the Arab world.

I next turn to the specific issue of media regulation as part of the EC's general cultural policy, discussing briefly the rationale for the "cultural exception", media regulation in the 21<sup>st</sup> century, and the role of PSB in promoting (European) culture.

## **Rationales for (continuing) media regulation in the 21<sup>st</sup> century**

The underlying belief behind much of European cultural policy and the call for a "cultural exception" in world trade agreements is that the media have a cultural dimension and that media products cannot be equated with other commercial products. Media products, indeed, are not "like pigmeat or banking services. They carry the baggage of forming part of our culture, of being perceived as having moral implications, of being associated with concepts of public service and, finally, of being the objects of important rights set out in national and international instruments"<sup>6</sup>.

This above-mentioned quote from Goldberg points to the 3 dimensions involved in the argument for cultural protection: the distinction between media products and other commercial products, the importance of broadcasting as a public service for a country's culture and national identity, and the intricate relationship between the media and universal human rights established by national and international conventions and treaties (freedom of expression, freedom of access to information, etc.)

To start with, the traditional view which considers information and media products largely as a socio-cultural resource was the foundation of the argument defended by France, the country at the forefront of the protectionist lobby during the 1993 GATT negotiations. By contrast, American negotiators defended a newer market-oriented view of cultural products, seeing them as just another commodity to be bought and sold in the free market<sup>7</sup>. With no lack of empirical evidence and statistics to support the traditionalists' view about the dominance and competitiveness of (cheap) American cultural products in a global market, European protectionism – whether through imposition of tariffs on cultural imports or the imposition of elaborate systems of quotas and subsidies – was seen as a must in order to prevent "all the globe [from becoming] Disneyland"<sup>8</sup>.

Second, the importance of public service broadcasting, both as a promoter of national identity and diversity (in programming), is still championed by the Europeans despite the abundance of programming via commercial cable, satellite channels, and other new media. PSB regulation would indeed seem to remain justifiable despite the obsolescence of the spectrum scarcity argument in an age of fibre optic, digital compression, and multi-channel cable and satellite offerings. This is mostly so because commercial considerations make private broadcasters

address relatively affluent members of the audience (i.e., consumers), while neglecting the needs of audiences that are either too poor, too linguistically or culturally diverse, or too geographically dispersed to be attractive to advertisers and programme makers<sup>9</sup>. Commercial media output, moreover, has been generally found to shun serious public affairs programming which is considered by many to be vital for the formation of an intelligent, informed citizenry in a functioning civil society. From an EU perspective, if European identity is to be promoted, only a well-funded and regulated public broadcaster in each of the Member States can be relied upon to correct the imbalance of commercial media output (mostly between the US and Europe), while maintaining and promoting the distinct language and cultural identity of each of the Member States .

Finally, it should be noted that, since the 1982 UNESCO report on the global culture industries, there has been an increasing understanding of the inter-relatedness between universally recognised human rights, such as those enshrined in the Universal Declaration of Human Rights, and media structures controlling the production and distribution or flow of information on a global level. The 1982 UNESCO report, now two decades old, sounded the alarm concerning the threat to global cultural diversity posed by the predominance of major Western (mostly American) media corporations and news agencies, and called for measures to be taken to create a balance in cultural production and exchange, including the creation of news agencies in developing countries. More recently, the 2001 UNESCO Universal Declaration on Cultural Diversity reasserted in its preamble the necessity to respect and affirm cultural diversity, especially in light of the challenge posed to it by "the process of globalisation...[and] the rapid development of new information and communication technologies". The 2001 Declaration, most importantly, stresses the importance of cultural diversity, not only as a fundamental human right, but also - along with dialogue and cooperation – as being "among the best guarantees of international peace and security". In this respect, it is worth quoting both articles 4 and 6:

*Article 4:* The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to

minorities and those of indigenous peoples...

*Article 6:* While ensuring the free flow of ideas by word and image care should be exercised that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

## **Media systems and cultural diversity in Arab countries**

Having reviewed briefly the reasons justifying the "cultural exception" stance adopted by Europeans in world trade agreements, as well as the concomitant need to continue supporting and regulating European PSB as an important tool for the promotion of national identity and diversity, and the support lent to these positions/measures by international conventions on human rights, I next turn to a brief examination of media systems in the Arab world. The aim of such a review is to provide a backdrop for a further discussion on the role of the European "cultural exception" in promoting cultural diversity not only within the EU but also in the Arab world.

Describing public service broadcasting in Africa, Marc Raboy wrote that it was a "distant ideal, not a working reality"<sup>10</sup>. Indeed, in a situation common to most ex-colonies in Africa and the (Arab) Middle East, most existing broadcasting systems were originally set up by the French or British colonials. They were thus far from being democratic and were indeed a poor imitation of public service broadcasting in France and the UK. Moreover, when these institutions were later taken over by local (nationalist) elites upon independence, they were largely turned into instruments of social mobilisation and political control<sup>11</sup>. This was mostly the case in those countries where revolutionary regimes took over (e.g. Egypt, Syria, Iraq, Libya, Algeria, Sudan, and South Yemen) and where the broadcast media were heavily subsidised in order to promote the revolutionary ideals and the official line of the government. In other Arab countries (mostly the Gulf countries and the rather stable monarchies of Jordan and Morocco),

broadcasting was also entirely government-controlled, though "less intensely and aggressively political, (...) less interested in active social engineering of the masses and therefore (...)less intrigued with the media as tools for social change"<sup>12</sup>. Though the content of the broadcast media in this second set of countries was more entertainment-oriented and less politically motivated, news and public affairs programming remained tightly controlled, and extolled the achievements and virtues of top government officials, to the exclusion of debate and political participation. Finally, Lebanon stands out as a unique case, with television being introduced as a pure commercial enterprise as early as 1959 (some Arab countries did not witness the introduction of television until 1975). However, despite some variations in the Arab broadcasting systems and regimes, all Arab broadcast media shared a common characteristic: whether revolutionary or purely commercial, they were regulated by the same laws that regulated the press in Arab countries. Such press laws were detailed in their listing of an entire range of restrictions and prohibitions (e.g. criticising the head of state, a neighbouring country, or the Islamic religion, threatening national security, etc.). However, these press laws did not address the specificity of the broadcast medium, and consequently, there was no active policy or special mandate for the broadcast media to provide universal access, to cater for disadvantaged populations and minority cultural interests, to foster pluralism of opinion, or to provide a wide range of programming to help create an informed citizenry.

The situation did not change with the introduction of the first law on private broadcasting in the Arab world. The 1994 Lebanese Broadcasting Act recognizes the importance of the respect of human dignity, freedom of expression, and pluralism of opinion. The Act, however, suffers from several omissions, the most serious of which concerns the role of public service broadcasting. The Act, which was the culmination of a 5-year effort to solve the issue of unregulated broadcast media after the end of the Civil War, simply deferred discussing the fate of the state-owned television (or Tele Liban) to later on. Nine years later, no legislation concerning the mandate, regulation, restructuring, or funding of public service broadcasting has been introduced. Tele Liban, at some point, had to shut down for a few months for lack of funding and a clear government policy towards it.

This neglect of the role of the public broadcaster, especially for a (still) highly fragmented society emerging from a bloody civil war, is quite alarming. Not only is it emblematic of the absence of a tradition of public service broadcasting in Arab countries in general, it stands in total contradiction to the experience of other countries with political and media systems in transition. For instance, the Lebanese approach to public service broadcasting is a far cry from the South African experience (with all its shortcomings), where the media, especially PSB, have been seen as instrumental in turning a society founded on racial segregation into a more democratic, integrated one. It is also different from the East European experience, especially in the EU accession countries and democracies in transition that have legislated (at least on paper) for a public service broadcasting, and have committed themselves, at least in principle, to the creation of PSB that is independent of the government and serves the public interest<sup>13</sup>.

The Lebanese experience could have served as a model for the introduction of the concept of public service broadcasting, in addition to the introduction of legal private broadcasting into the Arab world. Instead, it was a missed opportunity: by totally neglecting the role that PSB can play in rebuilding a fragmented society, by passing legislation for private broadcasting that is deficient in its content requirements (as we shall see below), and by circumventing some of the positive aspects of the law during the implementation process<sup>14</sup>, post-Civil War governments demonstrated the continuing effort by the state to exercise political control over the media, even as these were being privatised, to the exclusion of any attempt to address and promote issues of diversity (ethnic or religious) which is the cornerstone of a modern, peaceful, multicultural nation-state.

### **The Lebanese Broadcasting Act of 1994 and the "promotion" of national production and cultural diversity: living "in denial"**

In this section, I examine the content requirements of the Lebanese Broadcasting Act (hitherto referred to as the 1994 Act or the Act), specifically as regards the protection and promotion of national cultural production. Article 7

(Paragraphs 3 and 4) of the 1994 Act stipulates that the granting of a license to an applicant is conditional, among other things, upon the applicant's commitment to develop the national cultural industry (by hiring local talent) and, more specifically, upon the fulfillment of quotas for local production as specified in the accompanying Guidebook for Operating Conditions (or Decree 7997).

Under a section titled "Minimal Broadcasting Hours and Compulsory Local Programmes", the Guidebook specifies that a minimum of 730 hours of "compulsory" local programmes should be broadcast per year. Considering that, according to the same Guidebook, a television station of the first category (i.e., with political programming) has to broadcast at least 12 hours a day, the percentage of "mandatory" local production amounts to approximately 16.6% of a station's yearly total broadcasting time. For a station that broadcasts 24 hours a day, the percentage drops accordingly by half and barely makes up 8.4 % of the total yearly output (see Table on local production quotas below).

Moreover, of the total compulsory 730 hours, 13 hours should be dedicated to drama or fictional programming, be it "inspired by Lebanese, Arab, or international history and

literary heritage". Since these 13 hours are not exclusively about Lebanese cultural heritage, the Guidebook adds that "the percentage of Lebanese programmes should make up at least 40% of these hours". In other words, a licensed private television station is required by law to produce no less than 5 hours and 12 minutes of locally produced drama *about Lebanon annually*. This compulsory number of hours, for a station broadcasting 24 hours per day, would make up 0.059% of its total broadcasting time per year. Not only were the quotas fixed ridiculously low and practically incapable of promoting locally produced programming, much less national culture and heritage, major unlicensed operating stations at the time of the passage of the Act were producing percentages of local production and local content significantly higher than those fixed by the Guidebook (sic).

Other compulsory locally produced programmes include series, news bulletins, game shows, children's programming, documentaries, sports shows, and so on. Converting the specified thematic breakdown of the mandatory 730 hours of local programming into percentages for a yearly output shows that, of the 16.6% of the yearly fixed minimum of local programming,

Assuming a daily broadcast of 12 hours, we end up with

### Local production quotas according to Lebanese broadcast legislation:

MINIMUM HOURS OF YEARLY LOCAL PRODUCTION		% FOR A 12 HOUR DAILY BROADCAST	% FOR A 24 HOUR DAILY BROADCAST
TOTAL OF 730 HOURS/YEAR		16,6 %	8,4%
News	280 hours	6,39 %	3,19%
Variety shows, documentaries, regional developmental programming	166 hours	3,78 %	1,89%
Songs and music	129 hours	2,94 %	1,47%
Game shows	90 hours	2,05 %	1,02%
Plays	13 hours	0,29 %	0,148%
General drama series	52 hours	7,2 %	3,6%
<i>Lebanese drama*</i>	5,3 hours	0,118 %	0,059%

\* Drama dealing specifically with Lebanese content, heritage, or history is already included, in terms of number of hours per year, in the general category "drama series". It is shown separately in this table to demonstrate the very low percentage allocated to Lebanese content *by law*.

the following percentages: 0.89 % goes to local drama/series, 6.39 % to local news, 2.94 % to songs and music, 2.05 % to game shows, and a remaining 4.08 % to sports, variety shows, documentaries, and development programming (e.g., agriculture, public health, etc). Finally, according to the same Guidebook, 20% of the compulsory 730 hours of local production, or 3.3 % of the total yearly output (always

assuming a daily broadcast of 12 hours) shall be dedicated to children and youth. This percentage of programming for children and youth is extremely low, especially considering that reconciliation and peace in Lebanon may be dependent upon the education of the younger generations and the instilling of the ideals of co-existence in a still highly fragmented, multi-confessional society.

Finally, since the programme quotas fixed by the Guidebook are given in absolute terms (or numbers of hours) and not expressed as a percentage of a station's total yearly output, all the above percentages, once again, can drop by half if a station broadcasts up to 24 hours a day (which is the case for most operating private stations in Lebanon). In either case, it is actually very hard to see how these mandatory, incredibly low quotas can effectively protect, much less promote or "develop the national cultural industry", as specified in the Guidebook of Operating Conditions. Indeed, with such a low number of compulsory hours of local production and content, it would be a miracle if any of the goals behind the quota system were achieved. The section of the Guidebook titled General Terms lists some of these goals:

To encourage Lebanese TV production, [to] thrive to highlight Lebanon's archeological, historical, artistic and cultural landmarks, and give full support to research and experiment in the arts with a view to ensuring creativity and innovation.

Contrasting the Lebanese content quota system with the French counterpart, one realises the degree to which the Lebanese system fails in protecting, much less promoting, local content and local productions. The French Audio-visual Law of 1986, which was supposedly used as a blueprint for the Lebanese Act <sup>15</sup>, not only expresses the quotas of French programming in terms of a *fixed percentage* of the total output that is independent of the hours of broadcasting a year, but this percentage is almost

five times as great as the one fixed in the Lebanese Guidebook of Operating Conditions (assuming a 24 hour a day broadcast). For instance, Article 27 of the French Law, as amended on 1 August 2000, requires that 40% of all film and audiovisual productions be French. The percentage can climb up to 60% for specialised stations dedicated to the promotion of French culture. In the case of radio, not only should French songs make up 40% of the total broadcast, but also half of that percentage should be allocated to new talent or new songs. Finally, an added protection clause ensures that these French local productions have a prominent place (e.g. prime time) in the broadcasting schedule. By contrast, not only are the Lebanese percentages of local programming low, other content restrictions (e.g., scheduling time) are very lax or nonexistent, and actually make it possible for private broadcasters to eventually avoid producing local content altogether if they wished to, dealing a deadly blow to Lebanese culture, Lebanese artists and independent producers. For instance, while still respecting the letter of the law, Lebanese private broadcasters can schedule Lebanese programming late at night, and reserve the lucrative prime time slot for (cheap) popular US or Mexican commercial series. They can also replay old Lebanese series ad nauseam in order to fulfill the quota requirement, without having to produce any new local programming. Finally, it is possible for Lebanese broadcasters to make Lebanese programming in a *non-Lebanese* language, since nothing in the Act or the Guidebook specifies anything about the language to be used in all types of programming except for the news. Indeed, a recent content analysis found that most of the children programmes on one of the major Lebanese private television stations were not in Arabic. Instead, they were mostly in French or English. When Arabic children's programmes existed, they made extensive use of French or English, without attempting to include the Arabic translation in the subtitles <sup>16</sup>.

Another problematic omission in the 1994 Act concerns religious broadcasting catering to the various confessions that make up the Lebanese population <sup>17</sup>. The Guidebook does include the possibility of airing religious programmes, however a maximum total of 52 hours a year is allowed, and this is to be distributed among the various confessions according to "the principle of equality and the need to

preserve the requirements of public order and interest". Expressed as a percentage, 52 hours a year is 1.18% for an average of 12 hour broadcast per day and 0.59% for a 24 hour broadcast. Considering at least the 5 major confessional groups in the country (i.e. Sunnis, Shi'ites, Druze, Maronites, and Greek Orthodox), this could mean that each of these 5 groups can get as little as 10 hours of airtime during an entire year. For a "religious" country (as stipulated in the constitution) comprised of no less than 19 different religious communities, where politics and religion are inseparable components of one's identity (at least according to the state), it is hard to see how this requirement of "pluralism" in the broadcast media can be achieved by allocating one hour a week to religious programming relevant to all religious communities, unless the pluralism referred to in the Act is seen to mean everything but religious pluralism<sup>18</sup>. Considering that there is no other possibility foreseen by the Act to broadcast religious programming, and that the "forgotten" public broadcaster (i.e., Tele Liban) cannot be relied on to act in the public interest and provide a forum for all religious constituents in the country, the Act's protection of pluralism of ideas, on the one hand, and its practical prohibition of religious programming, on the other, seem to be quite irreconcilable, even paradoxical. One could argue that the 1994 Act is in tune with the post-Civil War, amended constitution's goal to abolish confessionalism, which is perceived to be the source of the country's ills. However, while the amended constitution recognizes the need to work towards that goal *in stages* (Article 95), the 1994 Act simply obliterates the need to address the issue/problem of confessionalism in the media. This is also a far cry from the South African experience, where important structural and content changes in the broadcast media were introduced to transform the state-owned network (SABC) into a public service broadcaster in order to parallel, if not prepare the ground for larger changes in the political system. South Africa also set up a Truth and Reconciliation Commission (TRC) to look into gross violations of human rights that occurred between 1960 and 1994. In other words, whereas the post-apartheid South Africa is attempting "to both look back and move forward"<sup>19</sup>, the Lebanese post-Civil War governments seem to prefer the "stick one's head into the sand" approach to media and society in general and hope that things will

somehow change for the better on their own.

As I have already mentioned, the 1994 Act, as it was repeatedly claimed, was modeled after the French audio-visual law (the Leotard Law of 1986). Though France is a secular country, the 1986 French Law allocates time for religious programming on its public channels. Article 56 stipulates that Sunday morning should be reserved for religious programming that caters to the major religious denominations in France. Expenses for making and transmitting such programming, moreover, are to be covered by the French public broadcaster.

The absence of any clause requiring Lebanese broadcasters to address "minority interests" is also in tune with the Acts' general rejection of the public broadcasting ideal of addressing diverse ethnic or religious groups. The situation is paradoxical in an additional manner with respect to Armenians, who constitute the country's largest ethnic/linguistic community. Like any of the country's religious groups (Armenians in Lebanon are mostly Armenian Catholic or Armenian Orthodox Christians), Armenians have the constitutional right to political representation in parliament, to set up their own educational and religious systems, and to resort to their own religious courts concerning civil matters /disputes. By contrast, the Broadcasting Act does not recognise their right to be represented in the Lebanese media.

Finally, concurrent with the absence of the concept of PSB in the Arab world, is the absence of independent regulatory bodies for the media. Unlike Western countries, where (relatively) independent bodies can be resorted to to check abuses and unfair representations in the media, most media issues or "infringements" in the Arab media are processed by the state. Even when regulatory bodies do exist (Lebanon again is a case in point), they are given very limited powers and act more like lapdogs of the government. Worse yet, through their "rulings", they - more often than not - provide a convenient cover up for what is essentially a politically-based decision. For example, the Lebanese National Audio-visual Council - set up in 1996 to license and monitor the private broadcast media in Lebanon - still does not have the budget, facilities, location, permanent staff and equipment to carry out its "monitoring" activities. Even if it did, its powers are minimal, while most of the decision-making authority regarding regulation of media content is

retained by the Minister of Information and/or the Council of Ministers.

The absence of the concept of public service broadcasting in media legislation within the Arab world is compounded by the absence of a civil awareness (on the part of regional NGOs and society in general) of the important role that can be played by PSB. This lack of awareness is especially alarming in an age of rapid privatisation of the broadcast media. With the wave of deregulation and satellite proliferation reaching and overwhelming the Arab world, we are witnessing a direct and sudden transition from government-controlled media to privately owned media. As a result, and unlike the case in the Western world where civil society is up in arms in defense of a dying breed (i.e., PSB), no similar defense has been undertaken in the Arab world. This is not to say, of course, that there is not a general dismay among the Arab populations about the predominance of tasteless, strictly commercial, non-pluralistic, and often blatantly sexist (even racist) programming on the mushrooming Arab satellite television industry<sup>20</sup>.

To sum up, public service broadcasting (or PSB), whether in Europe or North America (especially in Canada), has been traditionally relied upon to include and give a voice to all segments of the population, regardless of differences in ethnicity, sex, religion, and so on. Moreover, independent bodies and councils were set up (with varying degrees of success) to keep these public media institutions at arms length from the government. It was believed that PSB was crucial to create a sense of common national identity and inclusion among all citizens of a democratic country, and to provide them with a common forum for debate. It was also believed that this inclusion could only be provided by media institutions that could act independently of market pressures and could therefore address those (usually non-affluent) segments of the audience that are usually neglected by private commercial media. As I have argued in this paper, there is no tradition of public service broadcasting in the Arab world. Government-controlled media predominate, the majority of which are concerned almost exclusively with political propaganda and social control, instead of political pluralistic debate and social integration. Even if one can find provisions against racial segregation in the text of some broadcast laws (e.g. the Lebanese Broadcasting Act of

1994), these remain ink on paper. Indeed, blatantly racist portrayals of Blacks in general and of Sri Lanki female guest workers in particular exist in the Lebanese media, and do not seem to be problematic for the authorities or the existing regulatory body (the National Audiovisual Council). By contrast, criticising one of the monotheistic religions or any Lebanese or Arab head of state or country can cost dearly.

### **EU cultural policy and the promotion of Arab cultural diversity: the spill-over effect**

In the previous section, I discussed the failure of Arab government's legislation to actively promote cultural diversity and pluralism in the broadcast media. The situation is not different when it comes to promoting the national film industry. In Lebanon, for instance, it wasn't until very recently that the Ministry of Culture introduced, *for the first time*, a financial plan to support Lebanese cinema. In 2001, amid continuing budget restraints, it allocated 200 000 dollars to be distributed among 10 filmmakers. However, not only does the sum allocated barely cover 5 to 10% of the cost of each applicant project (the cost of an independent Lebanese film production is, on average, half a million dollars), the sum remained unpaid at the time of writing<sup>21</sup>. This lack of support, also characteristic of many other Arab countries, explains to a large extent why independent Arab film productions, compared with the dominant commercial Egyptian cinema, are very rare.

Moreover, the proliferation of Arab satellite channels is not leading to a proliferation of Arab fiction and documentary film productions. Instead, satellite stations continue to rely mostly on Egyptian stars in talk shows and Egyptian commercial drama series and films, at the expense of fostering diversity in Arab cultural production. In addition to the dominance of Egyptian film industry, one can find local television productions, but these are largely limited to quiz shows that are guaranteed to attract viewers, but have almost nothing to contribute in terms of cultural expression and exchange among the 22 Arab countries. Summarising the situation, one commentator wrote<sup>22</sup>:

...In the 10 years since the first Arab satellite stations went on air, they don't appear to have achieved a lot. If the free flow of information and objective coverage of current

affairs are related to change, then the stations cannot pretend to have contributed to any sort of transformation... The crisis facing Arab satellite channels...is identical to that facing the Arab media in general, which ignores crucial issues that touch directly on people's lives in favor of others on which there is total agreement.

Whether in the area of broadcasting or film production, the quantity, quality and type of cultural production is not independent of the related governments' approach to cultural production and policy in general. Three major official "attitudes" towards cinema can be readily identified, though they are not necessarily mutually exclusive: to start with, authoritarian regimes make it difficult for independent filmmakers to deal with serious or politically sensitive subject matter (e.g. the Palestinian-Israeli problem and criticism of religious or political authorities) without censorship threatening the fate of the project. Second, many Arab states are simply too poor to give cinema any priority in the context of other social development programmes. Finally, there are governments or government officials who do not believe in the important role that can be played by cinema, and consequently are not willing to invest in that sector. Jean Cham'oun, the most prolific and renowned documentary filmmaker in the Arab world, whose films have won various international awards, quoted the Lebanese Minister of Finance as saying publicly that "cinema is not important" in order to justify freezing the newly introduced plan to give financial support to Lebanese independent filmmakers<sup>23</sup>. Cham'oun, it should be noted, continues to be heavily dependent on financing from the European public sector in order to make his films. Indeed, eight of his 12 films were made possible through European co-financing coming mostly from the BBC, Channel 4, and ARTE. Another Lebanese filmmaker, Assad Fouladkar, whose latest fiction film was also a Lebanese-European co-production, and which won several awards in various film festivals, recently denounced the deplorable situation of filmmakers in the Arab world, describing Arab cinema as a dying breed, not only because of production problems, but also because of problems of projection in movie theatres (bad equipment, poor conditions, etc.). He also mentioned the Syrian government's desperate attempts to prevent movie theatres from shutting down through tax incentives<sup>24</sup>.

For lack of a cultural policy aimed at promoting Arab voices

in their diversity, many Arab filmmakers are becoming increasingly dependent upon Western financing, especially from the public sector, in order to make their films. The director of the Film Department at the Lebanese Ministry of Culture conceded that the "token" financial support provided by the Ministry was aimed more at encouraging Lebanese filmmakers to seek external support, mostly through European co-production schemes<sup>25</sup>. Indeed, a complete production team from ARTE (including several unit directors) was recently invited by the Lebanese Ministry of Culture to Lebanon in order to conduct a series of workshops. The workshops were aimed at training independent filmmakers, film instructors, and young film graduates about the co-production and exhibition/distribution methods of ARTE, and how to benefit from European expertise in the field. Indeed, one of the main problems accounting for the weakness of Arab cinema, despite the existence of talented filmmakers, is the lack of expertise in the area of production management and distribution<sup>26</sup>. European co-productions, in the light of the above-identified problems facing Arab cinema, can offer a convenient solution to all parties involved: on the one hand, talented Arab filmmakers get the financing and the professional production staff needed for a quality production, and European public broadcasters get to fill their content quota requirements while simultaneously providing jobs for European film professionals and technicians, as required by law. ARTE, as a public service broadcaster, has a mandate to "conceive, to carry out, and to broadcast or have broadcasted, via satellite or any other means, television programmes of a cultural and international nature at a large sense, which will be able to foster understanding and approaching among peoples in Europe".

As a result of such a policy, more than a third of ARTE's programming is originating from other (i.e., non-German or non-French) European countries and other parts of the world<sup>27</sup>. In a statement written by the president of ARTE/France and distributed recently during the ARTE workshop in Lebanon, Jerome Clement emphasised the growing importance of Euro-Mediterranean dialogue, and the need to work on making "the oriental and occidental coasts of our common sea better know each other". Such an openness to (Arab) countries situated on the other side of the Mediterranean is not new, nor is it to be seen in isolation

from a larger (mostly economic) EU plan involving neighboring countries (i.e. the Euro-Med Agreement). Indeed, the EU's commitment to audiovisual cooperation dates back to the conference that took place in Thessaloniki on 15 November 1997. This conference laid the foundations for a framework for cooperation, the Euromed Audiovisual Programme. Then, in September 1998, a follow up to this cooperation took place in Rhodes, with conference participants (i.e., Ministers of Culture of the Euro-Mediterranean Partners) invited by the Commission to "encourage regular exchanges of information as well as cooperation on the subject of regulatory and auto-regulatory questions in the audio-visual sector"<sup>28</sup>. Finally, the objective of the more recent Rabat conference was to "go into more depth regarding the operational aspects of this cooperation", with the "the mandate of approaching questions of organisations and structures". The main conclusions of the Rabat conference recognised that the emergence of a EuroMediterranean audiovisual area, boosted by the Barcelona process, "would have not only cultural but also economical and political consequences". Most importantly, participants called upon "the 27 Euro-Mediterranean Partners to rally together in order to defend cultural diversity in the framework of the negotiations of the WTO", and recognised the need to create a "legislative and/or regulatory framework, in the two-fold aim of ensuring that general interests are defended and to face up to market insufficiencies and imbalances, with the concern of preserving cultural diversity"<sup>29</sup>.

## Conclusion

The conclusions of the Rabat conference, especially concerning the preserving of cultural diversity and the need to defend it during WTO negotiations, are worth examining. I have already mentioned the problems involved when invoking the "cultural exception" argument in order to justify the "protection" and continuing regulation of the audiovisual sector and cultural production in general. Protectionism, it should be noted, can take several forms, ranging from the imposition of tariffs on cultural imports (a position defended mostly by the French) to the banning of satellite dishes and Western cultural products, as is the case in several Arab or

Islamic states. The problem with protectionism as a justification for the regulation of culture is that, in many cases, the "culture" that is in need for protection from "other", transborder cultures (e.g. US commercial exports) is often a mono-culture at the level of the nation-state, and is the result of dominant hegemonic views and definitions of national identity. For instance, while justifying the ban of satellite dishes in Iran, the head of parliament explained how such a decision enabled the Iranians to "show the world that we [Iranians] are against foreign culture, that is we will never be subservient to that culture and invasion by foreigners"<sup>30</sup>. Such "defence" may have some credibility when the culture being defended is a diverse culture that truly reflects the pluralist, multi-cultural make up of a nation-state. As critics of protectionism argue, and rightly so, governments championing cultural protection are often protecting dominant versions of a nation's identity (e.g., Frenchness or Britishness), which takes place at the expense of internal ethnic and cultural diversity<sup>31</sup>. In the case of the more authoritarian Arab or Islamic states, these governments often use or abuse the concept of "protectionism" in order to deflect discussion about repression of internal dissent at home by shifting the blame elsewhere, i.e. directing it at the US in most of the cases. Such claims to protectionism, indeed, remain vacuous and unconvincing in countries whose political systems and audio-visual policies do not recognise diversity in any of its form (political, religious, ethnic, linguistic, and so on).

To sum up, any call for cultural protection or exception is legitimate and more capable of winning support from all sides if what needs to be protected is not a culture, but the *diversity of culture*. The EU may have started the "cultural exception" debate from a narrow perspective (the French who wish to resist the "MacDonaldisation" of their culture). A more powerful approach, one that the EU seems to be increasingly adopting, may be to argue that what needs to be fought and regulated against is the pervasiveness of mono-culture, any mono-culture, be it at the level of the individual nation-state or on the transnational or global level.

## Notes

1. GOLDBERG et al. (1998) *EC Media Law and Policy*. London: Longman, p. 18.
2. GOLDBERG et al., 1998, p. 17. For a detailed discussion of the "cultural article" and its possibilities and limitations, see Goldberg et al, pp. 17, 18.
3. HARRISON, J.; WOODS, L.M. (2001) 'Defining European Public Service Broadcasting', *European Journal of Communication*, Vol. 16, No. 4, December 2001, p. 478
4. This is to say nothing of the tensions existing between the EC on the one hand, and the Member States on the other, regarding the enactment and implementation of several EC policies and the proper scope of Community competence. For more details, see HARRISON i WOODS, 2001, p. 478. GOLDBERG et al. (1998) also argue that the role of the EC regarding cultural policy is complicated by the fact that the EC is not a "monolithic policy-maker", and that institutional conflicts do exist within the EC, with "different rationales for regulation being adopted by different institutional actors", p. 5.
5. THOMPSON, K. (ed) (1997) *Media and Cultural Regulation*. London: Sage Publications, p. 120.
6. GOLDBERG et al., 1998, p. 2.
7. Both views continue to be the topic of much debate concerning broadcasting in the EU. GOLDBERG et al., p.14.
8. WOOLLACOTT citat a THOMPSON (ed), 1997, p.126.
9. TEER-TOMASELLI, R. (1998). 'The Public Broadcaster and Democracy in Transformation', *Canadian Journal of Communication*", Vol. 23, No. 2, 1998.
10. RABOY, M. quoted in HEATH, C. (2001). 'Regional Radio: A Response by the Ghana Broadcasting Corporation to Democratization and Competition', in the *Canadian Journal of Communication*, Vol. 26, No. 1.
11. RUGH, W. (1987). *The Arab Press: News Media and Political Process in the Arab World*. Syracuse: Syracuse University.
12. RUGH, 1987, p. 123.
13. JACKEL, A. (2001). 'Romania: From Tele-Revolution to Public Service Broadcasting, National Images and International Image', in *Canadian Journal of Communication*, Vol. 26, No. 1.
14. DABBOUS-SENENIG, D. (2002). *Ending the War? The Lebanese Broadcasting Act of 1994*. Unpublished doctoral dissertation, Sheffield Hallam University, UK.
15. Ibid.
16. CHOUR, N. (2001). *Television in Lebanon, Like Father Like Son: A Reflection of the Lebanese System*. Unpublished Masters Thesis, American University of Beirut, p. 38.
17. Very briefly, the Lebanese constitution recognizes the existence of 19 different confessions or denominations belonging to each of the 3 monotheistic religions (Judaism, Christianity, Islam). The political system is also confessional (i.e., political power and representation is proportional to the size of each confessional community).
18. The Lebanese Broadcasting Act of 1994 (or Law No. 382), Article 7, Paragraph 2. See also Guidebook of Operating Conditions (or Decree No. 7997) , Chapter One. This is not to say, of course, that the output of the private televisions does not reflect the confessional identity of the major shareholders. See DABBOUS-SENENIG (2002).
19. KRABILL, R. (2001). 'Symbiosis: mass media and the Truth and Reconciliation Commission of South Africa', a *Media, Culture & Society*, Vol. 23, No. 5. For a discussion on the transformation of the SABC from a government-controlled medium serving the interests of a white minority into a public service broadcaster

mandated to serve the country's 11 official language communities, see TEER-TOMASELLI (1998).

20. SHUQAIR, M. (2002). 'The role-playing of Arab Satellite TV', in The Daily Star newspaper, 5 december 2002.
21. Ghassan Abou Chakra, Director of Film Department, Lebanese Ministry of Culture, interviewed on November 20<sup>th</sup>, 2002.
22. SHUQAIR (2002).
23. Jean Chamoun, interviewed on November 20<sup>th</sup>, 2002.
24. Assad Fouladkar, interviewed on November 11<sup>th</sup>, 2002.
25. Ghassan Abou Chakra, interviewed on November 20<sup>th</sup>, 2002.
26. Ibid.
27. ARTE (2001), 'ARTE: la chaine culturelle europeenne', published by ARTE G.E.I.E., Presse & RP
28. 2nd Audiovisual Conference of the Euro-Mediterranean Partnership, "A framework for the dialogue of images", Rabat, 14-15-16 September 2000.
29. Ibid.
30. BBC *Monitoring*, 16<sup>th</sup> June, 1995, p. 5.
31. THOMPSON 1997, p. 120.

# "South of the West"\*: Cultural Coordinates of the Australian Audiovisual System

Stuart Cunningham and Terry Flew

- *The "cultural exception" debate raised around the mega-policy issue of WTO-sponsored trade liberalisation imperatives and incentives should not be locked into a Europe-USA or an English versus non-English-language opposition. Cultural diversity across the audiovisual world is much richer – and more interesting – than that. This article focuses on cultural diversity in the 'English world' – more specifically, on cultural diversity in the Australian audiovisual system. If a country that seemingly shares so much with the US and other English-language countries of the old British regime, is actually quite different in the way it mixes its cultural coordinates, the complexity and richness of the world's audiovisual systems are brought into sharper focus.*

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## Structure of the Australian Audiovisual Sector

Australian audiovisual media are characterised by the dominance of commercial, private sector interests and logics, albeit with a strong history of state subvention and regulation, and structuring of markets by political as well as economic means. Australian broadcasting has a long history of a 'dual system' of public service and commercial sectors which dates from the early 1930s, when the two sectors were termed the 'A' and 'B' class stations, with equivalent audience expectations of 'highbrow' or 'lowbrow', or informative or entertaining program content (Johnson 1988). Television was introduced in 1956 on the basis of this dual system logic, first going to air in Australia on 16 September 1956, coinciding with the 1956 Melbourne Olympics. In 1956, there were two commercial stations in Sydney (TCN 9 and ATN 7) and two in Melbourne (GTV 9 and HSV 7), with one ABC (Australian Broadcasting Commission (later Corporation)- the public broadcasting service) operating in Sydney and Melbourne. Broadcast television transmission was gradually extended throughout Australia through the late 1950s, the 1960s and 1970s, and remote areas of Australia, with large indigenous populations, finally received television in the late 1980s, through the BRACS (Broadcasting to Remote Aboriginal Communities Services) in the late 1980, after the 1985 launch of the AUSSAT satellite, which enabled national television networking.

Australian media demonstrate a hybrid quality, with its mainstream elements fashioned out of the intersection of British and American structures. Public service broadcasting has been a feature of the Australian broadcasting system since its inception, with the ABC being established on the model provided by the BBC- the unique point from which 'creativity' emerged in both the conservative and radical popular imaginaries of the time- but it has been a secondary

player alongside the commercial free-to-air sector, with audience shares roughly splitting 80:20 between the commercial and public broadcasting sectors in television. The ABC can be seen as an important expression of cultural modernism and nationalism as a force in Australia, and an instrument of national citizenship and a space-binding 'common culture' in a geographically large and dispersed nation. It would, however, be a mistake to see it as a 'high culture' adjunct to the broadcasting system, as it has always sought to balance its Charter obligations against those of audience popularity, particularly in regional Australia where it was for many years the sole provider of audiovisual media services (Craik 1991). Other manifestations of cultural nationalism in audiovisual media have included the historical miniseries in the 1980s that were imbued with the nation-building ethos of revivifying popular memory around defining moments in Australian history (Cunningham 1993), and film financing policies since the 1970s that have sought to combine critical and commercial success with occasions for mass popular reflection upon national identity (O'Regan 1996).

Australian commercial media has been dominated by a small number of family-based dynasties, most notably Rupert Murdoch's News Corporation (which accounts for 70% of Australian newspaper output, as well as having a controlling share of the FOXTEL pay TV service and controlling the Fox film studios in Sydney) and the Packer family's Publishing and Broadcasting Limited (PBL), which owns the dominant Nine Network in television, a range of magazine interests, and is in partnership with Microsoft on *ninemsn*, Australia's most accessed Web site. There are restrictions upon cross-media ownership, that have the effect of minimising News Corporation's role in free-to-air TV and prevent Packer from taking over the Fairfax print media group, although in practice the webs of interconnection between the major players are very extensive indeed (Productivity Commission 2000). While there are formal restrictions upon foreign ownership of Australian mass media, both News Corporation (whose CEO, Rupert Murdoch, is formally an American citizen) and the Can West group, a Canadian multinational that has a controlling interest over the Ten Network, have been able to operate 'under the radar' of formal legislative controls.

To this established dual system have been added

significant new elements. The Special Broadcasting Service (SBS), which commenced broadcasting in 1980, was established as a consequence of 'top-down' strategies of governance in a multicultural society. It was chartered to provide non-English language programming to Australia's many LOTE (Languages Other Than English) speaking communities, but also to promote cultural diversity in Australian society, both through ongoing commentary on issues arising from immigration and multiculturalism, and subtitling of non-English language material into English, thereby making it accessible to most sections of the community. By interpreting its Charter broadly, the SBS has proved to be an innovative provider of a diverse range of programming to a culturally diverse audience, rather than simply being a relay of non-English language programming to various diasporic communities, and by the late 1990s the SBS had arguably become Australia's most dynamic and innovative broadcasting service. There has also been sporadic government support for 'bottom-up' initiatives in the community broadcasting sector, which is particularly strong in radio but has had far more mixed outcomes in television (Rennie 2002). These developments have occurred alongside further commercialisation of mass media with the introduction of subscription broadcasting services (Pay TV) in 1995, which now has a take-up rate of over 20% (Flew and Spurgeon 2000), and the deregulation of related industries such as telecommunications.

### **Australian media and globalisation**

Australian media culture has been strongly enmeshed in globalisation processes since its inception. Early Australian commercial television was also characterised by high levels of imported programming, particularly from the United States, with the Vincent Report into Australian television finding that, in 1962, 97 per cent of Australian television drama was imported from the United States (Flew 1995). As a consequence of local content regulations for commercial television, that have developed from the early 1960s to the present, as well as the revealed preference of Australian audiences for local content, Australian commercial television is more local in terms of its content than was the case 30 years ago. Australian content regulation ensure that

55 per cent of television drama is local content, and it is also the case that expenditure on imported programming has fallen from 55 per cent of total program expenditure in the late 1960s, to around 30 per cent of total program expenditure in the late 1990s (Flew and Cunningham 2001: 80). In this light, Tom O'Regan has argued that: 'either/or scenarios of national culture or globalisation ... mask a situation in which national and international tendencies are co-present and are variously competitive with and complementary to each other' (O'Regan 1993: 100).

While this high level of import dependence has been redressed to some extent by local content regulations, it remains the case that Australia might be viewed as an 'import culture,' or one that is especially open to global cultural influence, on the basis of English language and strong historical and cultural linkages to the United States and Britain. Discussing the wide international and domestic success of the 1986 film *Crocodile Dundee*, Meaghan Morris (1988) has pointed to its 'positive unoriginality' in negotiating the tensions between cultural nationalism and global film industry economics. Morris shows how *Crocodile Dundee* exemplifies the dynamism of Australian culture in turning its derivativeness as a British colonial outpost that has been profoundly shaped by US culture in the 20<sup>th</sup> century to its advantage, producing a 'recombinant' cultural product well suited to the demands of the contemporary global film industry while also invoking a sense of place characteristic of national cinemas. By the 1990s, Australian films such as *Proof*, *Muriel's Wedding*, *Strictly Ballroom* and *Priscilla: Queen of the Desert* exemplified a form of 'export' cinema that drew upon cultural elements sufficiently diverse and eclectic for cultural critics such as Graeme Turner to ask what had happened to the sort of Australian 'national cinema' sought by the cultural nationalist pioneers of Australian film policy in the 1960s and 1970s (Turner 1994). Notwith-standing the pleasing potential of audiovisual export, it re-mains the case that total export revenue barely touches the sides of a major historic imbalance in favour of imports. Australia's balance of cultural trade deficit is more than \$3.2 billion (1996-97), with imports of films, television programs and video worth about three times export income.

It is possible to argue that 'when Australia became modern, it ceased to be interesting' - interesting, that is, to an international cultural intelligentsia and anthropological

audience (Miller 1994: 206). What made Australia 'interesting' in the late 19<sup>th</sup> and early 20<sup>th</sup> century was both the radically 'pre-modern' cultural difference of its indigenous peoples set against a transplanted white settler colonial culture, and the utopian belief that the ideals of the European Enlightenment could be transplanted upon the *Terra Nullius* which, until the Australian High Court's Mabo judgement of 1992, Australian was held to be by its settler population under British Crown law. Marxist cultural critics such as Andrew Milner (1991) find in Australia an interesting case study in global postmodernism, as 'a colony of European settlement suddenly set adrift, in intellectually and imaginatively uncharted Asian waters, by the precipitous decline of a distant Empire' (Milner 1991: 116). Such accounts obscure the significance of the nation-building state and the project of modernity undertaken in Australia in the 20<sup>th</sup> century, accepting far too readily he claim that Europe provides the templates of national political culture, and the semi-peripheral 'white settler' states established through empire are essentially derivative. But they do draw attention to Australia's distinctive position as both a historical product of the imperial projects of European modernity, yet also geographically located in the Asia-Pacific, arguably the most economically dynamic region in the 21<sup>st</sup> century. Ross Gibson (1992), in the book from which we have taken the title for this article, depicts the ambivalent nature of Australia as an antipodal relay point between Europe and Asia, the local and the global, the 'old' and the 'new' in these evocative terms:

For two hundred years the South Land has been a duplicitous object for the West. On the one hand, Australia is demonstrably a 'European' society, with exhaustive documentation available concerning its colonial inception and development. Yet on the other hand, because the society and its habitat have also been understood (for much longer than two hundred years) in the West as fantastic and other-worldly, the image of Australia is oddly doubled. Westerners can recognise themselves there at the same time as they encounter an alluringly exotic and perverse entity, the phantasm called Australia. Westerners can look South and feel 'at home', but, because the region has also served as a projective screen for European aspiration and anxiety, Australia also calls into question the assumptions and satisfactions by which any society or individual feels at

home (Gibson 1992: x).

Perhaps because of its historical and cultural links to Britain and the United States, and the dominance of the English language, Australian film and television provide important case studies of the degree to which success in international media markets entails 'playing at being American' (Caughie 1991). Tom O'Regan (1993) has referred to the 'double face' of Australian television with, on the one side, cheap imported programs cross-subsidise local production under a policy regime of domestic content quotas for commercial television, and, on the other side, industry economics that necessitate generic formats that can be exported as low-cost filler into the programming schedules of multichannel broadcasters in Europe, Asia, and North America (Cunningham and 1996). The Australian television production industry has become increasingly global in its sales and investment orientation since the late 1980s. While Australian programs were sold into international markets before the 1980s, with *Skippy the Bush Kangaroo* being the outstanding success, the pattern has since changed, with financing for much high-budget television increasingly coming from a mix of local and foreign sources, and some domestic production companies expanding their base of operations beyond Australia. Successful products have included serial drama ('soap opera') like *Prisoner*, *Neighbours*, and *Home and Away*, higher quality drama series like *Water Rats*, *Murder Call* and *Blue Heelers*, animated series such as *Blinky Bill*, children's programming such as *Bananas in Pyjamas*, the popular science and technology format *Beyond 2000*. Most recently, the 'reality' documentary *The Crocodile Hunter* has achieved remarkable international success through screening on The Discovery Channel, to the point where its energetic host Steve Irwin has established sufficient international popularity for a film based on his exploits, and an episode of the US animated comedy *South Park* where the character Cartman adopted his persona.

### **Legislating for Localism: The Australian Content Standard as Cultural Policy**

The Australian Content Standard requires that 55 per cent of programs broadcast between 6pm and midnight on

commercial television, and 50 per cent of overall programs broadcast, be of Australian origin. Such a local content standard has been in place in Australia since 1960, but it has evolved over time, particularly in the establishing of sub-quotas, based upon a points system that weights program cost as well as broadcast time, for locally-produced drama, children's programming, and documentary. Its principal objective is a cultural one, aiming to 'promote the role of commercial television in developing and reflecting a sense of Australian identity, character and cultural diversity' (quoted in Productivity Commission 2000: 380), but it is also important in industry development terms, providing a 'floor' for local production that is in competition with cheaper imported material. It is also a policy requirement that is met without difficulty by the commercial broadcasters, although there is occasional questioning of the mix of program types required. Arguments for the Australian content standard have drawn attention to the cost differentials between local and imported programming, its capacity to promote diversity and innovation in local television production, the promotion of a distinctive national culture through sustained exposure to programs with an 'Australian look', and resistance to globalising industry dynamics and 'cultural imperialism'. It has also been viewed as an instrument of cultural policy, particularly in the 1990s as cultural policy discourses established a relevance in Australian public policy and academic circles (Cunningham 1992; Bennett 1998; Bennett and Carter 2001). It has also been argued that 'pro-social' initiatives such as the local content quotas have rested historically upon a *quid pro quo*, where incumbent broadcasters have been protected from potential new competitors through policies such as the three-station to an area rule enshrined in the *Broadcasting Services Act 1992*, with the result being that capital city TV stations earned average profits of 25-30% for most of the 1990s, three times the average rate of profit for Australian industry as a whole (Flew 2002).

From the late 1980s on, the continued viability of the Australian Content Standard has come under scrutiny. Reform of broadcasting legislation leading to the *Broadcasting Services Act 1992* was accompanied by arguments by neo-liberal economists, both within and outside of government departments, that quotas may be little more than 'rent-seeking' behaviour by the local

audiovisual production sector (see Cunningham 1992, pp. 48-52, for a review of the arguments). There was in practice little change in this area for broadcasting, although the requirements for local production in television advertising were substantially diluted. More recently, the Productivity Commission, an agency within Treasury with responsibility for overseeing compliance of current government legislation across a range of areas with the principles of national competition policy. The Productivity Commission's Report (2000) found that the *Broadcasting Services Act*, was outdated, administratively complex, contrary to competition policy and other public policy principles, and an inadequate base from which to respond to the challenges of digitisation, technological convergence and new media services. It expressed concern about 'a history of political, technical, industrial, economic and social compromises' in Australian broadcasting policy, that had left 'a legacy of *quid pro quos* [that] has created a policy framework that is inward looking, anti-competitive and restrictive' (Productivity Commission 2000: 5). The Commission's belief that the public interest would best served by reducing barriers to the entry of new players, and promoting greater market competition, has not been supported by the conservative Howard Government, but its criticisms of the *status quo* continue to derive currency from the failure of the government's strategy to promote the transition from analog to digital television, which has largely protected the existing free-to-air sector.

The overall Australian policy position towards international trade agreements is ambiguous in relation to the audiovisual sector. Australia's overall negotiating position on the GATS and trade liberalization is a highly supportive one since Australian trade negotiators conceive of the nation as a small, open economy that benefits from multilateral trade agreements that require greater market access on the part of larger and potentially more influential nations and regions. Moreover, the perceived negative impact of the tariff system in manufacturing has helped to generate a free trade consensus or, put differently, an anti-protectionist alliance, at the higher levels of Australian policy culture. In the global arena, Australia has been pro-active in promoting multilateral trade agreements, such as forming the 'Cairns Group' of nations arguing for liberalisation of global agricultural markets. At the same time, in the Uruguay Round of GATS negotiations, audiovisual sector

representatives lobbied strongly for Australia to exempt the sector from its final GATS commitments, in light of concerns that Australian trade negotiators may 'trade off' policies such as local content quotas for greater access to North American agricultural markets. More recently, the 1998 High Court decision concerning the Closer Economic Relations (CER) trade agreement between Australia and New Zealand, which found that material produced in New Zealand had to count as 'Australian' for the purpose of quotas, drew attention to the possibility that policy objectives designed to foster an Australian cultural identity can be overridden by trade policy objectives and international treaties and agreements. While the impact of the judgement on Australian television programming has been minimal, due to the lack of appeal of New Zealand programming to Australian audiences, the CER provisions have been seen by critics in the local audiovisual sector as potentially a battering ram for enforcing conformity with GATS and other provisions stipulated by international trade bodies such as the World Trade Organisation. The official Australian position is highly ambiguous at present, being both reassuring to the local audiovisual sector about the maintenance of the Australian Content Standard, but highly supportive of the WTO agenda as well as a Free Trade Agreement with the United States.

### **Towards a New Configuration?**

The Australian audiovisual sector has sought both to provide content to domestic markets and to compete internationally. This has been reflective of a medium-sized, English-speaking nation that is highly permeable to imported cultural influences and globalising forces, seeking to turn potential vulnerability into a niche source of competitive advantage in global cultural markets. Policy towards the film and television sectors has sought to twin cultural development and industry development, partly through public subsidy and direct provision of audiovisual services (particularly in the area of public broadcasting), but also through measures that structure public assistance in forms that are cognate with- often implicit rather than publicly stated- cultural policy objectives. This has been in a context where the 'main game' of government policy more generally has promoted deregulation, trade liberalisation, and

multilateralism.

Tom O'Regan (2001) has observed that this balancing of the national and the international, and the cultural and the industrial, served Australian audiovisual industries well up to about the mid-1990s, but has been fraying since then. The Productivity Commission's inquiry into broadcasting drew attention to some of these tensions, as it worked within a paradigm consistent with that of the global content and knowledge industries (cf. OECD 1998), whereas the local audiovisual sector is focused upon a cultural development paradigm, even if it is less sure about the nature of Australian national culture than was the case, say, 30 years ago. These conflicting discursive orientations are reflective of a bifurcation of the Australian audiovisual sector, as productions that are under foreign financial and creative control have constituted a growing proportion of local production activity, and as direct Federal government funding for film and television agencies is stagnant or declining (Flew and Cunningham 2001: 85-89). The 'perpetual crisis' (Craig 2000) of the ABC, the flagship national public broadcaster, and the growth in 'global' film productions such as *The Matrix*, *Babe: Pig in the City*, the *Star Wars* prequels, and *Mission Impossible II*, appear as two sides of the same coin. Moreover, as creative industries and new economy discourses become more significant to public policy, and as the focus is increasingly upon the development of network-based content and services, cultural policy rhetorics will be 'squeezed', and the domain

of cultural policy will increasingly be in economic development agencies rather than the traditional arts policy agencies (cf. Cunningham 2002).

The impetus for cultural policy initiatives in Australia has always been industrial as much as cultural, even if it has often suited advocates to downplay the industrial side of the equation. In thinking about the possible impact of the WTO and, perhaps more urgently, a Free Trade Agreement between the United States and Australia, it is the industrial impacts that are more tangibly assessable than the cultural. This is in part because the multicultural nature of Australian society tends to see Australian culture as either remorsefully hybridized or a residual form (cf. Turner 1994). Australia has always been integrated into global economic, cultural and political circuits: policy principally impacts upon the terms of these negotiations, rather than the question of whether or not to be so integrated. The impact of globalisation upon audiovisual practices in the land 'South of the West' is more upon what is produced, and the circuits through which such cultural content is circulated, than the continued existence of the sector as such. The looming paradox of policy is that the guarantee of Australian content regulation as a cornerstone of cultural policy- the protection of incumbent broadcasters from new sources of competition - may lead to the stagnation of the sector, whereas dynamism in the Australian audiovisual industry may arise out of policies that risk the viability of the sector, by opening it up further to the forces of globalisation and competition.

\* Our title pays homage to an important book – Ross Gibson's 1992 *South of the West: Postcolonialism and the Narrative Construction of Australia* - which captures many of the distinctive cultural characteristics of Australia and which neither submits to nostalgia for a cultural tariff wall or glib globalisation rhetorics.

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# Mexico in the face of globalization: audiovisual policies to promote and protect its cultural diversity

Laura Márquez Elenes

- *This article analyzes the audiovisual policies adopted in Mexico to preserve, promote and protect its cultural diversity. The starting point is Mexico's position in the face of globalization, cultural diversity and the impact of cultural industries on the marketplace. It goes into detailed study of basic matters such as trade agreements, where Mexico's problems arise because of trade agreements based on financial and technological inequality. Another question of great importance in the matter of cultural diversity concerns social movements such as the EZLN (Zapatista National Liberation Army). The EZLN highlights the need to integrate ethnic groups within the Mexican nation and at the same time confront the globalization of international markets in a participative, respectful and plural way. These questions are framed within a network of international trade agreements (WTO and NAFTA) where cultural industries play a leading role.*

## Mexico in the face of globalization

Cultural diversity is a fact and the question raised in this article is how to respect and preserve each country's culture. The market economy and the exchange of products, goods and services affects our daily lives on an ongoing basis. Each country experiences this phenomenon in both its institutions and individuals. Trade exchanges have become extremely important, as have the symbols attributed to them and taken on when these goods and services are acquired. These market dynamics include the migratory movements of individuals from one region to another, whether within a country or out of it.

Technological development and access to the media and sources of information, such as radio, cinema, television and the Internet, are factors that impact and modify the behavior and feelings, ways of thinking and aspirations of people who consume and use messages present in the broadcast media. They and their content are cultural products that circulate from one place to another in different ways. They also impact differently both within the country where they are produced and abroad.

With this as the starting proposition, we would raise the following questions: 'What parts of a country's culture should we care for and preserve?', 'How do nation states contribute to the regulation of their audiovisual industries in the context of the globalized world?', and, 'To what extent should nation states be forced to be responsible for them?'

This article lists basic points needed to understand the situation that is occurring in Mexico with regard to its audiovisual policies in the context of a diverse national culture and the globalization of the market.

Mexico has a cultural diversity based on its pre-Hispanic history, with ethnic groups whose traditions, languages and forms of social organization are still present today. This

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cultural diversity has been redrawn by particular historical circumstances, such as the conquest and colonization by the Kingdom of Castile. The situation is currently determined by Mexico's geographic position to the south of the technological and industrial powerhouses of the United States and Canada. This was the situation in place when the North American Free Trade Agreement (NAFTA) was signed in 1994. It was aimed at developing a free trade zone and from the beginning was unequal in financial and technological development. This consequently led to a series of disadvantages in the exchange of products involving audiovisual cultural industries.

A number of different definitions of globalization are set forth in this paper to begin to explore this complex modern-day phenomenon. We will go into further detail with regard to the problems Mexico is up against when it comes to preserving and spreading its culture, expressed through audiovisual material, in the context of the global market.

### **Globalization and trade agreements**

Francisco R. Dávila (2002, pages 28, 29) writes that the idea of globalization is based on the general theory of economic integration and emphasizes the need to articulate the global economy in a harmonious setting. The legal instruments for this integration are international agreements on trade exchanges. Mexico is involved in two large-scale agreements of this type: the North American Free Trade Agreement (NAFTA) between Canada, the US and Mexico, and the World Trade Organization (WTO).

The general theory of global "integration" or "globalization" assimilates important elements of trade theory, especially with regard to exchanges on an international scale. They are usually developed efficiently and speedily, leaving modifications in the socio-political and cultural fields trailing in their wake. Giddens (2000, page 25) defines globalization as a complex series of processes rather than a single one, which operate in a contradictory and anti-ethical manner. He adds that some nations lose a degree of their economic power, but that there is also an opposite effect. Globalization not only adds upward pressure, but also downward pressure, creating new pressures for local autonomy. He goes on to say that globalization is the reason

behind the resurgence of local cultural identities in different parts of the world. Local nationalism sprouts in response to globalizing trends at the same time as the weight of older nation states loses force. Dávila (2002, pages 45,46) says the situation of nation states in the face of "global economic integration" involves a political commitment but also represents giving up a degree of sovereignty, which may be compensated for by the possible benefits of economic integration.

In the framework of globalization (Sinclair 2000, pages 146,147), some governments have chosen to protect their cultural industries while others have chosen not to. Countries such as the United States, with enormous comparative advantages over other nations, may not have any need to protect their markets, while at the other end of the scale there are countries that do not even have their own cultural industry to protect. Countries that have taken steps to protect their cultural industries, including Mexico, have run up against pressure from many fronts. The GATT (General Agreement on Trade and Tariffs) was established in the wake of World War II as an international organization to promote the ordered coordination of international trade. However, it never covered cultural industries. We understand the term "cultural industries" to include the critical and empirical study of the production and consumption of audiovisual products, involving not just how they are produced and distributed but also how they are received. Sinclair (2000, page 145) adds that nation-state intervention in the sphere of cultural industries is due to the fact that these industries concern ideas and images (i.e., culture) and that it questions not only the legitimacy of governments but also social control in fields relating to sex and religion and the ability to develop national culture and protect ethnic variety, regional variations and historical influences.

### **Globalization and cultural industries**

One historical moment in Mexico was the uprising of the Zapatista National Liberation Army (EZLN) in Chiapas, in the southeast of the country, where a great many ethnic groups live. The movement took off at the same time that NAFTA was signed, in January 1994, under the presidency

of Carlos Salinas de Gortari, and discussions about indigenous groups and globalization have been present on the national agenda ever since. Néstor García Canclini (1999, pages 45 and 75) says that globalization is a series of technological and trade changes that only take on global forms when international communication and financial markets are established. He adds that globalization obscures its cultural targets, generating profound symbolic changes through a process of regional economic integration, such as in the case of NAFTA. In order to understand the trends of current-day Mexico, we therefore have to analyze the issues behind the conquest and colonization of America, modern relationships between Latin American and European nations following independence in the 19<sup>th</sup> century, the remains of 20<sup>th</sup> century exchanges and the partial replacement of these economic and cultural ties with a new dependency on the United States.

In general, the presence of the International Monetary Fund (IMF) in Latin America to resolve unbalances that stem from paying trade debts was not as important in the past as it is now (Ferrer 1999, pg 77). Today, the IMF, together with the World Bank, has become a permanent player in shaping economic policies in a number of Latin American countries, which have seen their policies conditioned and monitored from abroad. Globalization, particularly in terms of finance, is influential in all the countries that make up the global order and limits the freedom of domestic policies. There are many question marks and a great deal of confusion hanging over this aspect of trade agreements and the economy concerning how our society's cultural and communicational bases will be affected by NAFTA (Esteinou 1995 in *Comunicación y Globalización*: "Communication Processes in the Face of Trilateral Integration", pages 177,178). This is because in some cases the State said that cultural industries and related areas would be included in the terms of negotiations, and in other cases it said they would not. For example, the signing of NAFTA opened the way to 49% of cable TV shares being able to be owned by foreigners. This had previously been a sector reserved for Mexicans or Mexican companies with a clause excluding foreign ownership. The same thing occurred in the film industry: before NAFTA, 50% of screen quota was reserved for Mexican films; after

NAFTA, this figure was reduced to 30%.

An illustrative example was the purchase on 20 June, 2002 of the Cimex group (*Mexicana de Comunicación* magazine, Sept-Oct 2002, page 1, section "Bitárcora"). Canadian firm Onex Corporation and the US's Oaktree Capital Management took full control of Cimex, one of the leading cinema chains in Mexico with 31 movie complexes and a total of 349 screens. Cinemex held 25% of the domestic market and 50% of the market in the metropolitan area of Mexico City. The operation was estimated to be worth 286 million dollars.

### **Cultural diversity, modernity, the media and telecommunications**

It is clear that within the national context in Mexico there are important indicators that signal "modernity" and "globalization", especially in terms of investment in telecommunications, cable TV and radio. However, it is also true that the integration of indigenous culture as part of the Mexican nation is present on the agenda both within the national context in Mexico and also with regard to its place in the global economy. We can give important dates and figures to support the relationships between Mexico's audiovisual cultural policies in the context of globalization.

- Mexico has a total population of 97,483,412 and an indigenous population registered in INEGI (the National Institute of Statistics, Geography and Informatics) and CONAPO (the National Council of Population) of 12,707,000, of which 5,995,636 speak an indigenous language.

- On 12 October, 1992, as part of the celebration of the 500<sup>th</sup> anniversary of the discovery of America, indigenous organizations held protests in Mexico City and San Cristóbal de las Casas (Chiapas), as well as other parts of the country. This was considered to mark the beginning of a new indigenous movement.

- On 16 February, 1996, two years after the Zapatista uprising in Chiapas, the Federal Government and the EZLN signed the San Andrés Larráinzar Agreements, which included a commitment to approve constitutional reform on indigenous law and culture.

- On 1 December, 2000, Vicente Fox took over as

president of the country for the 2000-2006 period. Fox promised to send the indigenous reform bill to Congress. The Office for the Development of Indigenous Peoples was also created and Marcos Matías became the first indigenous person to head up the National Indigenous Institute (INI).

- On 15 August, 2001, the constitutional reform on indigenous law and culture was published in the Official Journal. The Zapatistas, who had appeared before Congress for the COCOPA project, had previously rejected the approved text.

- The above events led to a reform of the law on audiovisual matters, under the section of Indigenous Media and Communities. On 24 March, 2002, the initiative for an Act on General Forms of Communication and an Act on Radio and Television was launched. This double legislative initiative was aimed at enabling indigenous people to operate radio stations, without being awarded a license but in recognition of basic human rights, and for indigenous communities to be able to establish cultural broadcasts.

The interpretation of the situation in Mexico in the framework of the audiovisual industry, politics and the economy was summed up in an article by Enrique Sánchez Ruiz (*Etcétera* magazine, July 2001, pages 50 to 52) entitled, "Ah, Production! Concentration and Laws on the Audiovisual Industry", in which he listed three important trends in Mexico: firstly, the transition to democracy, when the media played a very important role. Secondly, globalization, the current phase of the international capitalist system, with its subsequent redefinition of national sovereignty, even though nation states have yet to disappear. Thirdly, changes in the fields of technology and business and the convergence between the computer and other IT sectors involving telecommunications and the cultural industries sector.

It is also important to mention the Federal Competition Commission, created in the sixth year of the presidency of Carlos Salinas de Gortari, which has begun to exercise a number of actions to control mergers that could translate into situations of monopoly control. Finally, the Telecommunications Confederation (CONFETEL, a Mexican government organization) is charged with defending Mexico's sovereign right to regulate its telecommunications industry. CONFETEL works directly

with the General Coordination Commission on International Affairs to position Mexico as one of the main players in negotiations about international telecommunications in a multilateral sphere in order to suitably take advantage of technological advances with quality and diversity in aid of the country.

In the specific case of the audiovisual sector, television began a deregulation and privatization process and opened up to foreign investment (Sussman, in *Continental Order?* 2001, "Telecommunications after NAFTA: Mexico's Integration Strategy", pages 136 to 138). Sussman says that Mexico was pressured into signing the agreement by the United States, who is its biggest supplier of technology, especially in the telecommunications sector. In fact, this point was to be key to the success or failure of NAFTA. It is important to point out that the US is responsible for providing around 60% of the International Development Fund.

In television, deregulation and privatization strengthened the monopoly position of Televisa and the second biggest station, Televisión Azteca. These are the two most important private consortiums in Mexico and they opt massively for North American broadcasts, especially series. It is calculated that 40% of broadcasts are North American in origin. These series are dubbed into Spanish for the free-to-air television stations.

The Televisa group is the biggest media company in the Spanish-speaking world. The Televisa Foundation promotes knowledge about national culture and history and aims to promote artistic creation in our country, encourage knowledge of the Spanish language, promote Mexican arts, humanities and sciences and provide a dialogue between Mexico and the world. Televisión Azteca has no such project of this type.

In the opposite corner to the privatization of the broadcast space we can find "public service" channels that aim to complete the television offer. The Mexican Government awarded a license to Canal 22-Televisión Metropolitana, managed by the National Council for Culture and Arts of Mexico and the Department of Public Education. Its purpose is to bring audiences into contact with programs from the main audiovisual providers around the world and to produce programs about issues that are not given enough attention by Mexican channels. It is considered to be a public television station. Canal 11, run by the National Polytechnic

Institute (an educational institution for advanced tertiary studies), also defines itself as educational and cultural. However, these two television stations do not have the same scope across the national territory as Televisa and TV Azteca.

There is no indigenous or community television station. The National Indigenous Institute and the Office for Indigenous Affairs indicate a shortfall in this respect. The chapter on culture and rights in the National Program on Indigenous Settlements 2001-2006 notes that cultural diversity in Mexico is absent both in the public and private media. We can therefore see the difficulties cultural diversity in Mexico faces when it comes to projecting its identity and forging its own space. Looking beyond the situation of indigenous Mexico, we find that the mass audience channels (Televisa and TV Azteca) mainly broadcast US-made content. This situation limits Mexico's identity to a great extent and raises questions about the country's national culture.

Both the State and private sectors are facing complex dilemmas for integrating, preserving and promoting national cultural diversity. John Sinclair (2000, page 101) says that local, national and global media all play a key role in promoting symbolic content in accordance with dominant interests. We can therefore say that the media in Mexico serve contemporary globalization interests in which large and medium-sized enterprises try to enter international markets.

In this context, we can find a sometimes labyrinthine network of international trade agreements. Cultures will only be able to survive in the 21<sup>st</sup> century and project themselves onto the world if they have a market able to support a domestic industry that generates domestic content. National cultural policies will therefore become increasingly linked to the international trade agreements that each country takes part in. If we want to preserve our ability to make decisions on cultural questions that affect national integration, we will have to be very aware of the fact that culture should not be treated as simply another good but as an instrument that can drive social symbols and values.

Translated from Spanish by Lynda Trevitt

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# Indian Television in the Era of Globalisation: Unity, Diversity or Disparity?

Mira Kapil Desai

- *With globalisation, privatisation and liberalisation, transnational media flow and content have increased enormously, especially in the third world countries leading to the threat to local communication-media industry.*

*With the GAT/WTO agreements, the issue of "cultural exception"/protection of the audio-visual sector is a main concern to many governments including India. This paper elaborates about the Government response to developments of transnational-transborder-satellite television in the country and examines the issues of diversity in the Indian television scene. The paper examines the role of the Indian state in the times of cultural homogenisation and assesses whether Indian television in the era of globalisation projects cultural unity, diversity or disparity. The paper discusses unity, diversity or disparity in terms of language, religion, access and division in Indian media environment in the era of globalisation.*

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## Background

Last decade refers to global connectivity, compression of time and space and market ruling over the State. All over the world remarkable changes and challenges marked the end of the twentieth century. The changes mainly in technology of communication and transportation, deregulation of capital, liberalisation and desire of cultural exchanges and challenges to regulate for the reluctant State, global competition, market driven economy and increasing interdependence of global economy are realities of the nineties. Globalisation increasingly brought the realisation that the State is losing power and freedom of action and an unprecedented movement of cultural homogenisation is taking place across the globe.

UNESCO comments that as the globalisation of markets, technology and information sweeps the world, growing homogenisation is countered by accelerating fragmentation: people are brought increasingly together at the same time they are driven apart. The twentieth century has been the most disastrous in human history in social and political terms. 'Emergence of culture is an important factor in determining the status of an individual in society or of a nation in the world is a matter of great significance' Singh (1998).

Audiovisual landscapes encompassing television, radio, cinema, video game and multimedia sectors in respect of both production and distribution/broadcasting (including cable and satellite) and other areas of culture (publishing, the arts, cultural institutes and heritage) have a special role to play in any society. These sectors often referred to as 'cultural industry' face the threat of 'imperialism' all the more in the era of globalisation. Public policies of legislative, regulatory or financial measures put in place by the State in co-operation with other parties are of special importance in

such a circumstance. These cultural goods are different from other goods and services, and deserve different and/or exceptional treatment. This differential treatment has to reflect even in the international trade agreements and in the demands for effective and strong regulatory frameworks to redefine cultural policies focusing on the promotion and development of cultural industries.

As tariffs, quotas, import licensing, and other long visible trade barriers come down, other concerns become more obvious. The "cultural exception" is just one of the possible means for achieving this objective of promoting cultural diversity ([http://www.unesco.org/culture/industries/trade/html\\_eng/question18.shtml#18](http://www.unesco.org/culture/industries/trade/html_eng/question18.shtml#18)). Government regulations, quotas, exemption and concessions, subsidies, supply restrictions, and intellectual property protections are few of the responses for cultural protection-exception to counter fears of cultural homogenisation.

Sinclair (1997) comments that the STAR's strategy of 'going local' shows how much language and culture have emerged as 'tangible markets'. Hamelink (1994: 111) commented, "A basic ingredient is missing for global culture. Culture provides people with a sense of identity, a past, destiny and dignity. Culture is bound to time and space. Global culture is inherently weak as it has no historical and spatial location...but there undoubtedly is a process of cultural globalisation". The trends of localisation, cultural adaptation of global products and the role of language in regionalisation support Hamelink's comment.

From the audience perspective, younger generations are growing up watching the western content values and understand little of their indigenous media (Varma, 2000). Commercialisation, the diminishing role of the State, the threats to public service broadcasters and the impact of western contents on domestic productions in form of 'genres, formats or production values' (Sereberny-Mohammadi 1991, Richards, 2000) are all facts indicating that protection measures are required. Canada, China, Australia and France are few examples where parameters exist to ensure local content on television to restrict different types of foreign programmes. Against this trend, India, Philippines, Thailand, Hong Kong and Japan are few of the countries that have opted for an 'open sky' policy.

This paper examines the post-1990 developments in India on the television front. It elaborates on the Government res-

ponse to the development of transnational-transborder-satellite television in the country and examines the issues of unity, diversity and disparities in the Indian television scene.

## **India - A case in Point**

India has a pluralistic character in terms of ideas, languages, forms of worship, architecture, agricultural practices, dress, handicrafts, medicine, industry, science and instruments of production and consumption. Apart from more than six religious orientations, the language scenario in India is very complex. There are 1562 mother tongues, 10 writing systems, 76 languages in the school system out of 2000 codified languages. The Indian constitution recognises 18 languages in its schedule eighth spoken by 98% population. Vijayanunni (1999) reports that nearly 20 per cent of the population in India is bilingual while just over seven percent is trilingual.

The Indian media mosaic is diverse yet unified. Folk forms of dance, music, oral traditions, story telling and Government control from newsprint to telecommunication unite Indian media. Another common factor is the Indian film industry that started in the country almost at the same time as it did in the world. Since 1912, India has indigenously developed a culturally rooted film industry, which makes the largest number of films in the world. Indian film industry has been a strong influence on the rest of the media. Radio, television and music industry rely heavily on Indian film industry. The American hegemony of Hollywood has never bothered the Indian audio-visual market. Interestingly enough, Indian film industry is further divided into two broad categories- a northern one (mainly Hindi, the Indian national language) and a southern (languages of the southern states).

India is one of the few nations with capabilities in satellite technology having influenced developments on the television front. Table-1 in the Annexes notes the satellite launches by the Government of India. Post-1990 satellite television in India has become transnational in nature. It coincided with the entry of multinational companies in the Indian markets under the Government policy of privatisation. The implications were private ownership in disguised forms, absence of censorship or any such controls, autonomy and

commercialisation of the medium and economic, political and cultural implications of transnational messages. The concept of television as an intimate and family medium is being utilized to its fullest to influence the rapidly expanding middle class in India (estimated to be 222-250 million of the 535 million people with access to television). Today 535.4 million people have access to television in a country of 100 million people.

Nowadays Indian television means regional television networks, language channels, country/language approach by commercial broadcasters and preference for public service broadcaster due to economic and other considerations by Indian audiences. Indian television also means confusion for national identity, lack of language representation, division of urban-rural areas, co-existence of private and public systems, dilemmas of prioritisation of education upon entertainment, development over market and so on. India is in this context a very interesting case in point for cultural diversity debate as the diversity inherently brings complexities.

## Television in India

Television was initiated in most developing countries including India mainly due to a 'political will' (UNESCO 1953 and 1964, Katz & Wedell 1977). It accomplished technical efficiency over the years (from black and white to colour, portable television sets, television broadcasting by satellites, development of cable television), establishing itself in the society due to private investment in television sets and finally strengthening its presence because of advertisers' interest in the medium since 1976, when the first advertisement was aired on Indian television.

History of television in India dates back to 15<sup>th</sup> September 1959, when experimental telecasts from radio stations began due to a grant from UNESCO (UNESCO 1953, Bhatt 1994). A one-hour transmission service became regular exactly after six years with a daily news bulletin in 1965. SITE was the first step in the direction of satellite television in India. Little happened in Indian television prior to Satellite Instructional Television Experiment (SITE), an experimental six-state initiative in television-based communication for social and development communication. Indian television

was separated from Indian radio in 1976.

**Television sets:** In 1962 there were only 41 sets in the country that rose to 2,75,424 in 1974 and boomed to 4,76,026 (173%) in the next two years. The last official figure of television sets in the country by 1984 was 36,32,328 since the policy of licensing of television sets was called off in 1985. Table-2 in the Annexes notes the developments thereafter with a total of 74.71 million sets in the country today, 57.72 million of which are black & white and 16.99 million are colour sets. Prior to 1983, 28 per cent of the Indian population mainly in metropolis (except SITE areas) had access to television. The proportion increased to 53 per cent in 1985, 62 per cent by 1988 and today it covers almost 90 per cent of the country's population.

**Video & Cable boom:** Video boom, cable television and dish antennas in five-star hotels were few of the factors facilitating the change of face of satellite television in India in the early eighties. In less than five years, from 1984 to 1989, the penetration of video moved from the capital down to the districts and villages (Shah 1997, Agrawal 1991). Enterprising individuals in apartment blocks placed a video in their homes or their garages and started offering a cable TV service to people in their vicinity. Cable television appeared in the United States in late 1940's and grew by 1967 for a different purpose, to deliver over-the-air television signals to areas where reception was inadequate because of topography or distance. Even in most western European countries it was limited to relay transmission of broadcast signals in the eighties. In India it appears in the early eighties for altogether different purpose, to deliver mass entertainment needs of audiences who can afford cable connection (Jehoram, 1983). The growth of cable television homes in urban India indicates a rise from 0.41 million in 1992 to 40 million in 2002 as noted in the Table-3.

Cable operators are an important link in Indian television distribution. A cable operator using dish antennas receives programmes and redistributes them to individual household subscribers through a cable network. The costs are distributed to such a great extent that the subscriber can receive an average of 40 channels for a monthly subscription fee of about 1.25 Euros to 8.50 Euros after paying some installation charges.

India opted for the British model of broadcasting. Parallel to the entertainment-driven market model of television, India

has also a number of ongoing educational and social communication experiments mainly through the Development and Educational Communication Unit, Indian Space Research Association. The notable ones are GRAMSAT (Gramin Satellite- Accelerating the pace of Rural Development), Jhabua Development Communication Project, Training and Development Communication Channel, GyanVani- educational radio and television services.

## Response of the Indian Government

Up to 1991 the television broadcasting in India meant that the Indian State controlled the nation-wide network, *DoorDarshan*. By 1991 satellite television took the form of 'transnational television' with telecast of Gulf war by CNN. McDowell (1997: 168) notes that more channels, cable television distribution regulation, together with some programming changes highlight the Government of India's response and policy choices in 1990s. According to *India Today* dated 31<sup>st</sup> March 1992, an internal report of the Ministry of Information and Broadcasting had predicated as early as February 1991 that 'Programmes specifically targeted at Indian audiences are likely to be beamed from foreign satellites in the near future'. The reactions of the Government of India in the print media during that time were that 'there is no threat' (*Indian Express* 1992, *The Times of India* 1992). As Reddi (1996: 243) notes, 'inaction is the best condition for private enterprises to flourish, and they are now unstoppable'.

*DoorDarshan* underwent major changes in the period from 1993 to 1998. Tracey (1998) notes, "...the shift of emphasis on *DoorDarshan*...within the overall context of growing commercialisation of media in India (and even many other developing countries across globe)". The historic judgement of the Indian Supreme Court on airwaves in 1995 stated: "air waves or frequencies are public property. Their use had to be controlled and regulated by a public authority in the interest of the public and to prevent invasion of their rights".

Laws, rules and regulations do exist in India, but on the whole they facilitate the reception of foreign satellite programmes; the Indian state actually 'actively mediated the process' (McDowell, 1997: 155). Prasar Bharati Act of 1990

provided 'for the establishment of a Broadcasting Corporation for India, to be known as Prasar Bharati, to define its composition, functions and powers and to provide for matters connected therewith or incidental thereto'. In 1991, the government of the Congress (political party then in power) re-examined the Prasar Bharati Act of 1990 to fight the fear of competition from private television channels.

After the initial licensing of dish antennas to restrict satellite television, the Government came up with distribution regulation in form of Cable Television Network Regulation Bill (1994) and the Act was passed in 1995. The Government started taxing cable operators in a bid to generate revenues. The rates rose by 35 percent in 26 states of India. The Act made is mandatory for the Cable operators, who must register their companies in the Post Office and pay entertainment taxes. More significantly, the Act made transmission of at least two *DoorDarshan* channels obligatory, and drew up a programming and advertising code, the adherence to which would be the responsibility of the operator.

Indian government's stand to technological developments is clear from the New Telecom Policy 1999 of BJP Government which reads, 'The Indian telecommunications system continues to be governed by the provisions of the Indian Telegraph Act, 1885 (ITA 1885) and the Indian Wireless Act, 1933. Substantial changes have taken place in the telecommunications sector since 1992. ITA 1885 needs to be replaced with a more forward looking Act'. In 2001 the Communication Convergence bill was introduced by the Department of Telecommunications *to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommutonication, and multimedia), for the establishment of an autonomous Commission to regulate all forms of communications, and for the establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto*. On December 1, 2002, the Communications Minister reported that the Government is not in a hurry and the decision will be taken by May 2003.

## Unity, Disparity or Diversity? The Complexities

**Language:** The language landscape in India is very

complex. There is a large number of population, which knows English. At the same time, the southern part of India was always marginalized in the process to promote national language 'Hindi-centric, Delhi-centric' programming (Singhal & Rogers, 2001: 98). With their great success, private satellite channels created history in southern India due to 'a preference for the language, quality of programme content, availability of preferred programming types or through identification with the socio-cultural context' (Muppiddi, 1999). DoorDarshan has regional language channels in 15 languages but they are available through cable. Only nine languages are represented through private satellite channels. Many satellite channels in India today are bilingual. Thussu, taking a case of '*Hinglish*' (Hindi + English) comments that its use 'has been the contributory factor in the expansion of Indian television outside the borders of the country' and expresses his concern because an 'increasing emphasis on entertainment-led **Hinglish** television may be cause of celebration for post-modern view of a culturally hybrid, globalised world resulting in a linguistic and intellectual confusion that may trivialise the vital public concerns' (2000: 308).

**Religion:** Culture in Indian television is still framed under the mainstream of 'Hindu' identity with a high rate of mythological features. Mostly Hindu, highly urbanized-upper middle class representations and stereotyping of religious identity is the core content of the television programming. Myths like *Ramayana* and *Mahabharat* played a significant role in promoting Hindu-centric national identity (Mitra 1993, Rajagopal 2000). *DoorDarshan* as per the programming code never named any community but international broadcasters do not follow that code. Shield & Muppiddi (1996: 19) conclude, "The plurality of representations (post-1990)...would render ineffective any attempts at propagating a highly selective version of national identity and culture".

**Access:** The television landscape of four Asian countries (Senstrup & Goonasekera, 1994) revealed that of the four countries under study compared to Korea and Australia where 99.9 and 99 percent households have television sets, India has only 20 per cent households with one television. Seventy percent of the television sets in India are black & white and the disparity across and within the states range from 86 per cent B&W (in Bihar) to 32 percent B&W (in

Kerala). The issue of B&W is crucial in the sense that the set has limited capability to tune in channels and so inherent limitation to access 100+ private satellite channels. Krishnan (2001: 48) rightly remarks, "a lot of time and energy in television channels is spent on the programming aspect without sufficient emphasis being placed on the distribution aspect". Besides, many Indian households who cannot afford other things, own a television set and at times cable connection. This leads to a lot of pressure to conform to the norms projected on television without having resources to do so. And with the social development-education agenda displaced with the marketing messages, the disparity and diversity in the scenario can lead to social unrest and conflicts.

**Divisions:** After 1992, Indian television advertising invariably targets to urban upper middle class, Satellite Hindi channels are 'unabashedly urban north Indian' (Bajpai, 1999: 54). Salwar Kameez (Indian female clothing) is a sign of liberated woman in the southern language private channel *Sun* while for Hindi channels it is a sign of tradition or conservatism. Door Darshan's figures report that 73.8 per cent of urban households has television sets while 23.7 per cent of rural homes has television and the ratio of urban and rural C&STV households is 40.6 to 6.5. There is a disparity of access, projection and representation. The diversity that 'pays' gets 'space' in present media environment.

Ninan (2002) comments that the press censorship in India means 'censorship imposed by the market, by political correctness, by militancy and extremism, by the political connections of the editor/owner, by the inability to substantiate, and generally on account of laziness accompanied by fear of libel (Can't get proof or the other side's version? Just drop the name.)'. Indian television has more or less the same players.

## Conclusion

*"I do not want my house to be walled in on all sides and my windows to be stuffed. I want the culture of all the lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any".* This most frequently cited quote by Mahatma Gandhi, Father of the Nation, becomes

most relevant when it comes to culture and globalisation. Today Indian television has become the mirror of cultural diversity present in the Indian society; it unites Indian society mainly through dependence on respective film industries while disparity still exists in terms of representation of identity and access.

What happened in Indian markets is a clear indication of collision of culture and commerce. The legal frameworks may be sound on paper but that does not ensure implementation. 'Unity in Diversity' the catch slogan of the Government of India appears to be in disparity with the ground reality. Indian consumers have multiple choices and the Indian Government is working hard to cope with the changes in the media environment in its own tortoise style. Indian television in the era of globalisation is witnessing 'the elimination of the government monopoly and the attempt at broadcasting regulation (as) mere reactions' (Mehta, 1998) due to technological developments and market forces.

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## Annexes

**Table 1. Milestones of INSAT launches by the Government of India**

Satellite	Launch Date
INSAT 1A	April 10, 1982
INSAT 1B	August 30, 1983
INSAT 1C	July 21 1988
INSAT 1D	June 12 1990
INSAT 2A (First indigenously built second generation satellite)	July 10 1992
INSAT 2B	July 23 1993
INSAT 2C	December 7 1995
INSAT 2D	June 4 1997
INSAT 2E (Last multipurpose satellite in INSAT 2 series)	April 1999
INSAT 3A	February 2000

Source: DECU, 2000

**Table 2. Television Households in India**

Year	1985	1990	1995	1997	2002
No. of sets (in millions)	6,8	6,8	6,8	6,8	6,8

Source: Doordarshan 1997 and [www.ddindia.net](http://www.ddindia.net)

**Table 3. Cable Television Homes in India**

Year	Jan 1992	Feb 1993	Oct 1993	Jun 1995	Dec 1996	Sept 1998	1999	2002
Estimated households (in millions)	0,41	3,30	7,23	9,30	11,0	18,5	29 (NRS)	40 (NRS)
							25 (NRS)	

Source: Doordarshan 1997, The Economic Times 1998, IRS and NRS Figures

**Table 4. Transnational Television on Indian Sky**

Panamsat 4	Asiasat 1	Asiasat 2	Intelsat 703	Intelsat 704	Thaicom 2/3
BBC	StarSports	CNBC	TVI	Eenadu	PunjabiWorld
CNN	Star Plus	TV 5	SunMusic	VijayTV	RajTV
Discovery	Star Movies	Star News	Asianet	Gemini TV	Asianet
ESPN	Zee Cinema	Star TV	Sun TV	MTV	ATN
Home TV	ZeeTV	TVE	UdayaTV	SunTV	ATNBangla
MTV	Star World	Sky News			ATN Hindi
Sony TV	Zee India	CCTV			
TNT		TVSN			
Music Asia					

Source: India Infoline Sector Reports Media Sector Update, Thu, 15-Mar-2001  
<http://www.indiainfoline.com/sect/medi/up03.html>

**Table 5. Milestones of Television in India**

Year	Event
1959	TV was introduced in Delhi as experimental service under UNESCO grant
1965	Daily broadcast of an hour was regularised as a service
1966	Verghese Committee recommends autonomous National Broadcast Trust.
1969	Agreement for SITE experiment with NASA, USA
1968	Increase in the duration of Television service
1975	SITE was launched in 2400 villages of six states for a year
1976	DoorDarshan- national broadcaster of India, separated from All Indian Radio
1980	First Television commercial was telecast
1982	INSAT-1A launched, TV go Colour, National telecast of Asiad games
1984	First sponsored serial Called 'Hum Log' telecast, UGC CWCR began
1987/ 89	Morning transmission began, Afternoon transmission began
1990	<i>Prasar Bharati</i> Bill was passed by Indian Parliament after many amendments
1991	STAR beamed its satellite channels to India in May
1992	Zee started Hindi channel as a part of STAR network
1993	Four additional satellite channels & regional channels in 10 languages by DD
1995	DD launched international channel, Supreme Court's landmark judgement on 'air wave as public property', Ram Vilas Paswan Committee on National Media Policy, Cable (Television Network) Regulation Act promulgated
1997	Broadcast Bill was introduced in LokSabha under which <i>Prasar Bharati</i> Board (Broadcasting Corporation of India) was constituted in September
2001	Communication Convergence Bill of Department of Telecommunication was introduced in LokSabha
2002	DD has 1242 TV transmitters reaches 40 million of the 75 million TV households have C&S connection. CATV Networks (Regulation) Amendment Bill was introduced with a view to mandating an addressable system for pay channels through cable networks Conditional Access System Bill awaits Rajyasabha approval to become Act

**Table 6. Acts & Regulations for cable & television in India**

<p><b>The Cable Television Networks (Regulation) Amendment Bill (2002):</b> The new policy permits to link up with any television channel from India. It also allows the Indian news agencies to have their own connection facilities for purposes of newsgathering and its further distribution. This Bill includes the Conditional Access System provision for households to choose satellite channels. The Bill is under Parliamentary discussion.</p>
<p><b>The Broadcasting Bill (1997):</b> The Bill is to provide for an independent authority to be known as the Broadcasting Authority of India, which is for the purpose of facilitating and regulating broadcasting services in India. It made it mandatory for all the channels to transmit programmes from Indian territory and kept cap on foreign equity.</p>
<p><b>Cable (Television Network) Regulation Act (1995):</b> There has been a haphazard mushrooming of cable television networks all over the country due to the availability of signals of foreign television networks via satellites. To check the screening of undesirable programmes and advertisements which are screened on these channels and to regulate the operation of the cable television networks in the country, so as to bring uniformity in their functioning, the Cable Television Networks (Regulation) Act was passed in both Houses of the Parliament.</p>
<p><b>The Prasar Bharati Act (1990):</b> This Act was passed to provide for the establishment of a Broadcasting Corporation for India, to be known as Prasar Bharati. It says that it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.</p>
<p><b>The Copyright Act (1914):</b> "The importance of copyright was recognised after the invention of the printing press which enabled the reproduction of books in large quantities. The Indian Copyright Act was thus passed in 1914. But, during the last four decades, modern and advanced means of communications like broadcasting, litho-photography, television, etc made inroads in the Indian economy. It necessitated the fulfilment of international obligations in the field of Copyright. A comprehensive legislation had to be introduced to completely revise the Copyright law. This was achieved by the introduction of a Copyright Bill, 1957 in the Parliament."</p>
<p><b>The Indian Telegraph Act (1885):</b> The Indian Telegraph Act 1885 came into force on 1st October 1885. "Telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means. The Indian Telegraphic Act, 1885 was an Act to amend the law relating to Telegraphs in India.</p>

# The WTO, the Doha Negotiations and Developing Countries

**Miguel Rodríguez Mendoza**

About a year ago, the IV WTO Ministerial Conference, meeting in Doha, Qatar, launched a new, comprehensive set of multilateral trade negotiations. Following the practice of previous negotiations -- those conducted under the aegis of the GATT --, ministers gave these negotiations a name -- the Doha Development Agenda -- to signal the focus of their efforts. By doing so, the WTO ministers wanted to address a key concern in the debates on globalization and development: the perception that the WTO is not responsive to the needs and aspirations of developing countries, and that developing countries have little to gain by participating in the WTO. This view has often been expressed not only by civil society and non-governmental organizations, but also by many developing countries.

But the focus on development was not just a concession from the rich countries to the poorer WTO members. It also resulted from the unprecedented activism deployed by developing countries all along the preparatory process, and during the Doha Ministerial itself. Developing countries showed a lot of resolve in pushing forward their proposals, and in containing those that they saw harmful to their interests. They were well organized, in regional or functional caucus. And they deployed their negotiating skills in all the subject-areas under consideration, forcing many trade-offs where none was envisaged, as when the ACP countries conditioned their acceptance of the Doha Declaration to the approval of a waiver for the Cotonu Partnership Agreement, which they had concluded with the EU.

Thus, both the political and social environment in the industrialized countries, and the growing assertiveness of

developing countries in the WTO made development issues for the first time in the history of the multilateral trading system a central consideration of trade negotiations. It remains to be seen, however, to what extent this translates into actual agreements. Although the Doha negotiations still have two more years to go -- until the beginning of the year 2005 -- progress so far has been of a very limited nature. During the first year of negotiations -- which began in earnest in early 2002, except for the negotiations on agriculture and services which started in March 2000 -- the WTO has been very busy holding meetings and examining hundreds of negotiating proposals, but achieving very little by way of concrete results. At the closing of 2002, there was a growing sense of frustration in many countries, particularly developing countries, as they failed to reach agreement on a few, critical issues closely linked to the "development" nature of the Doha negotiations.

In these notes, I deal with the Doha negotiations from the perspective of the developing countries. I refer in the next sections to the evolving participation of developing countries in the multilateral trading system, and to the challenges of the Doha negotiating agenda, before concluding with a preliminary assessment of the first year of the negotiations.

## **Developing countries and the WTO...**

The participation of developing countries in the multilateral trading system has changed considerably in the last few years. First, in terms of membership as developing countries have massively joined the WTO, the most notable example being of course China's accession to the WTO in late 2001. Second, because trade and trade policies are critical components of developing countries' economic strategies. And, finally, because developing countries use

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**Miguel Rodríguez Mendoza**

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*Former WTO Deputy-Director General until september 2002*

more and more the WTO, including its dispute settlement mechanism, for what the WTO stands for, to promote and protect the trade interests of its member countries.

Indeed, membership of developing countries to the WTO has expanded significantly. As of today, there are 145 WTO Members, of which more than 70 percent are developing countries. This situation contrast with that of the GATT. In 1947, when the GATT came into being, there were 11 developing countries among the 23 original signatories. These included China and India, and a few Latin American countries, such as Brazil and Chile. By the time the GATT ceased to exist, in 1994, it had 76 developing contracting parties.

At present, more than 100 developing countries are WTO Members, and there are some 30 other countries, most of them developing countries, which have requested or are negotiating their accession to the WTO. Countries in accession include the Russian Federation as well as Saudi Arabia, Algeria and Vietnam. In a few years, once these negotiations are completed the WTO will be a truly universal organization.

Also, it is easy to see why developing countries are interested in the WTO. Trade is a critical component of their economic strategies. Since the mid-1980s, many developing countries have rejected inward-looking, import-substitution models of development in favor of trade reform and liberalization. This has increased the stakes of developing countries in the multilateral trading system, and in international trade.

Trade accounts for an increasing percentage of the economic activity in developing countries. For instance, during the 1990s, the openness of all developing countries to trade (the ratio of exports and imports in GDP at real prices) increased from 29 per cent to 43.5 per cent. Also, the structure of developing countries' trade is shifting away from primary products to manufactures. For example, in the year 2000 manufactures accounted for 85 per cent of total East Asian's exports, and 60 per cent of Latin American exports. And equally important, developing countries trade more and more with other developing countries. Almost 36 per cent of developing countries exports in 2000 went to the markets of other developing countries, with exports of manufactures being the most dynamic component of intra-developing countries' trade, but with exports of agricultural products also accounting for an important proportion of this trade.

As the trade of developing countries continues to expand, and trade policies take root, the WTO and trade negotiations play a supporting role in the fulfilling of developing countries' development objectives. Developing countries need the WTO as much as the WTO needs developing countries. A strengthened multilateral trading system, providing predictable and secure access to export markets, is a necessary condition for developing countries to achieve their full integration into the world economy. And as developing countries seek to seize the opportunities of the international marketplace, they find in the WTO a set of stable rules for the conduction of their trade strategies.

That's why developing countries have become very active in the WTO. The establishment of the WTO in 1994 was a major step forward in the integration of developing countries into the multilateral trading system, as fully-fledged commitments were taken on for the first time, covering trade in goods and services, as well as on intellectual property rights. Previously in the GATT, developing countries' efforts had concentrated more on trying to remain exempt from the rules rather than participating actively in negotiations. However, with more and more developing countries becoming important exporters, they are firmly asserting their trading interests in the WTO.

For example, as the WTO is a system of enforceable rules, the developing countries are using more and more the dispute settlement mechanism to better protect their trade interest. For example, developing countries as a whole have initiated more complains in the WTO than the European Union and almost as many as the United States. Interestingly, more than 40 percent of developing countries complaints are against other developing countries, including countries from the same regions, thus reflecting the changing realities of developing countries' trade relations, as indicated before.

In the overall, developing countries account for approximately 31 percent of the complaints initiated so far under the WTO, and 39 percent of those leveled against them. This contrasts with the fact that only 13 percent of all cases were brought against developing countries in the last 15 years of the GATT (1980-94). This seems to suggest that the increase in developing countries' obligations after the conclusion of the Uruguay Round, goes hand in hand with an increase in WTO litigation.

## The Doha negotiating agenda

Developing countries played an important role in shaping the Doha negotiating agenda, and they significantly influenced the nature and content of the new negotiations. The Doha negotiations cover a wide variety of issues, which can be classified into three main categories or cloisters. The first one covers those issues addressing market access for goods and services, which include the on-going negotiations on agriculture and services as well as negotiations to reduce or eliminate tariffs, including tariff peaks, and non-tariff barriers in the industrial sector. The second category of negotiating issues includes those which aim to revise, strengthen or modify existing WTO agreements and rules. This category has the widest coverage. It includes negotiations on the subsidies and anti-dumping agreements; on WTO rules regarding regional trade arrangements; on some aspects of the intellectual property agreement, i.e. negotiations for the establishment of a system of notification and registration of geographical indications for wines and spirits; on clarification regarding the WTO and the trade rules of multilateral environmental agreements; and, finally, negotiations to revise the WTO dispute settlement understanding. Finally, there is a third category of negotiating issues, which covers a few "new" issues that were proposed for inclusion in the WTO framework. This category includes investment and competition policies, transparency in government procurement, and trade facilitation. And contrary to the other elements of the Doha program, negotiations on these issues will not start before the next WTO Ministerial Conference, to be held in Cancún, Mexico, in September 2003, where a number of decisions regarding the modalities of those negotiations need to be taken.

The Doha Development Agenda, adopted at the end of the Ministerial Conference, contains the modalities and objectives of the negotiations for each of the areas mentioned above. In most cases the goal are very clear: fundamental reform is needed. That is the case of agriculture, where the negotiations aim to achieve a fuller and more effective integration of agriculture within the multilateral trading system. And of the negotiations on market access for non-agricultural products, which are supposed to address issues such as tariff peaks and tariff

escalation, which are two of the main concerns of developing countries. And services, where the negotiations seek to expand on the limited results achieved during the Uruguay Round when it comes to trade liberalization in the services sector. And, of course, rules, where several WTO agreements are in need of reform, as witnessed during the debates on implementation issues.<sup>1</sup>

A year after the beginning of the negotiations the balance is mixed. On the one hand, the negotiating machinery is operating at full speed, and there is an endless succession of meetings of the negotiating groups. Also, judging by the number and quality of the negotiating proposals presented by WTO members on the various areas under negotiation, they seem to be fully engaged in the Doha exercise. Moving beyond the surface, however, the picture is less rosy. There are many reasons for this. First, the negotiations on agriculture are moving into troubled waters, and there is a certain sense of frustration at the lack of effective engagement on the part of the European Union. Disagreements among the European countries regarding the future of the Common Agricultural Policy (CAP), and uncertainties regarding the impact of the coming EU expansion is preventing the Commission from making its views known as to how to achieve the negotiating goals contained in the Doha Development Agenda. To this should be added the unwelcome signal sent by the United States when it approved earlier in the year a new farm bill, which significantly increased the financial support that it provides to its farmers. As of this writing, it is probably that a crucial point in the negotiations on agriculture, i.e. the establishing, by the end of March 2003, of modalities for further commitments in the areas of market access, domestic support and export competition, not be reached. This, in turn, may affect the overall timeframe of the negotiations, as no final outcome will be possible in absence of concrete progress in the negotiations on agriculture.

Two other issues are clouding the Doha negotiations. One is the lack of progress on the issue of special and differential treatment (S&D) of developing countries, where WTO members made the commitment at Doha to find by the end of 2002 ways to make the S&D provisions of the various WTO agreements more operational and effective. They failed on this, as well as on other commitment made at Doha, that of identifying the modalities by which developing

countries with limited production capacity could get access to generic medicaments in cases of serious public health crisis, an issue which is still pending due mainly to the opposition of the United States. Although not strictly part of the Doha negotiations the lack of progress on these two issues, both of great concern principally to developing countries, added to the indecisiveness of the negotiations on agriculture, are making of the “development” goals of the Doha negotiations more an illusion than a reality. And few still believe that the negotiations will be completed within the agreed time frame if the current mood continues.

Not all is that gloomy, though. In some areas of the Doha negotiations progress seem to be taken root. On services, for example, the negotiations have moved to the stage where countries have begun to exchange requests and offers of concessions, thus initiating the negotiations proper. And on market access for industrial products there is a number of very ambitious and far reaching proposals on the negotiating table. Some of these proposals, such as the ones presented by the United States, New Zealand and Hong Kong, seek the elimination of all duties at the end of a given timeframe; others, such as the ones presented by the EU and Switzerland, deal effectively with tariff peaks and tariff escalation. Even if the reaction of developing countries to many of these proposals has been rather negative as they imply greater tariff cuts from their part, this is an area where real progress is not difficult to envisage as the negotiations proceed.

As the negotiations enter into their second year, and WTO members start preparations for the Cancún Ministerial attention will continue to focus on the above mentioned issues, but also on the sensitive issues of investment and competition policies, government procurement and trade facilitation. WTO members will need to agree whether to move these issues to the negotiating stage. As it is mainly developing countries that have offered resistance to do so, it is not difficult to imagine that they will keep this position as long as the issues of concern to them remain unresolved.

Summing-up, it is too early to make a final judgement on the Doha negotiations. Progress on some areas has been accompanied by lack of progress on others, and there is a sense of frustration in many developing countries as the issues of concern to them are still pending. There is also a growing realization by many countries that the three years

timeframe set by the Doha Ministerial is too short to complete the negotiations.

But there is also a clear recognition by all WTO members that the stakes of the Doha negotiations are very high, as they offer significant opportunities to developing countries –as well as other WTO members. Indeed, the Doha negotiations offer a unique opportunity to achieve a more fundamental reform of agricultural trade, a key sector for developing countries, which is now subject to trade distorting measures and production subsidies by many developed countries. They also offer the opportunity to operate the opening of the markets of the industrialized countries, where trade protection, in the form of tariff peaks and tariff escalation, is still very high in areas of particular interest to developing countries, such as textiles. And to open as well the markets of developing countries, which have grown in significance for other developing countries. Finally, and perhaps more importantly, the Doha negotiations offer the opportunity to make the WTO a better place for the developing countries and for all WTO members, by making a better and more equitable multilateral trading system.

And these opportunities should not be missed!

## Note

- 1 This debated focused on a series of proposals put forward by a number of developing countries to deal with their perceived problems in the implementation of WTO agreements. Overall, there were more than 100 proposals touching on most of the WTO Agreements. As a result of this debated, which originated before the Seattle Ministerial and extended until the Doha Conference, about half of the proposals were somehow resolved and the remaining are being dealt with by the relevant WTO bodies or in the context of the Doha negotiations.

# Interview with Pascal Lamy

## Ramon Torrent

**Pascal Lamy** is a graduate of France's leading business school, the Ecole des Hautes Etudes Commerciales (HEC), the Paris Institute of Political Studies ("Sciences Po") and the ENA civil service college (Ecole Nationale d'Administration). Until 1984, he was adviser to Economics and Finance Minister, Jacques Delors, and to Prime Minister Pierre Mauroy. From 1984 to 1994, Mr Lamy worked in Brussels as chief of staff (chef de cabinet) to Commission President, Jacques Delors, representing him at the G7.

After the privatisation of Crédit Lyonnais, where he was encharged of its restructure, Mr Lamy was appointed in July 1999 by Romano Prodi and the French government to the European Commission. In September 1999 the European Parliament confirmed him as Trade Commissioner.

**Ramon Torrent**, chair professor of Political Economics at the University of Barcelona (UB), director of the Globalisation Observatory (UB-PCB), and promoter and director of the WTO chair, the first chair created by an agreement between the WTO (World Trade Organization) and a University (the UB).

From 1988 to 1998 was a member of the Juridical Service at the Council of the European Union, and since 1993 he is the director of International Economic Relations.

**Ramon Torrent (R.T.)**. In a few words could you please give us your point of view on the relationship between cultural policy, particularly in terms of the audiovisual sector, and external economic and trade relations policy ?

**Pascal Lamy (P.L.)**. Cultural cooperation is an important aspect of agreements concluded between the European Union and other countries. It's all about developing cultural exchange and mutual comprehension between cultures. This aspect also fronts our trade policy, in particular for the audiovisual sector: at the WTO for example, we defend the possibility of co production agreements with other countries. What is more, a better cultural understanding is often one of the things needed to enhance business relationships. I'm referring here for example to countries in the Far East.

**R.T.** Despite frequent use of the expression "cultural exception", no GATS section or schedule allows specific provisions (let alone an "exception") for the cultural sector.

There is simply an absence of specific agreements and certain exemptions from the MFN ("Most Favoured Nation") clause. Do you think that this situation is satisfactory or acceptable ?

**P.L.** You are quite right in your analysis of the General Agreement on Trade in Services (GATS). The flexible structure of this agreement allows us several things: firstly, we have signed no undertaking to liberalise audiovisual services; secondly, the clause on national status will not be applied to this sector; and finally, exemptions from the Most Favoured Nation clause will be included, without it being necessary to specifically refer to this issue in the GATS text. We can thus preserve our cultural policy instruments and adapt them to new needs and contexts. Exemptions from the Most Favoured Nation clause allow us, for instance, to promote television channel broadcasting of European works and to enter into preferential co production agreements with other countries.

**R.T.** According to the GATS Schedule on permitted exemptions, the list of MFN clause exemptions for the European Community and Member States expires "in principal" in 2004. Don't you worry that when it does expire there will be a new Unites States offensive to dismantle protective policies in the sector ?

**P.L.** It is of course essential for us to preserve the exemptions from the Most Favoured Nation clause in order to be able to continue our policy promoting co production and distribution of European works – in the largest sense of the term, not just European Union works – and we will defend these exceptions to the hilt. I am however little worried about a possible offensive by other WTO Members to dismantle these exception in 2004: most of the WTO Members have adopted similar exemptions, in the audiovisual sector or in others, and aren't ready to let them go.

**R.T.** In their lists of undertakings and exemptions, Nation States such as Canada have provided for special measures with regard to certain regions or provinces (Quebec for example). Do you think this possibility should be considered within the European Union?

**P.L.** We've already put this provision into effect. In numerous sectors for which the European Union has undertaken trade liberalisation, certain limitations to be applied only for one or more EU Member States, or even regionally, have been listed. For the audiovisual sector this would be meaningless because in our case we have agreed no liberalisation measures. The Member States and the regional or local public authorities can thus, insofar as their competence extends, continue to implement and develop policies for this sector.

**R.T.** Under Section 151 of the EC treaty, European internal powers in cultural questions are very limited: restricted to the adoption of promotional measures, and precluded from any harmonisation measures. In your opinion, should these powers be extended in the Treaty reforms underway ?

**P.L.** People along with national and local authorities in Europe, are very attached to ensuring that powers in cultural questions remain very close to the community, at grass roots. European policies can however be complementary and should be developed on two fronts. Firstly the broader

principles: the "right to a culture's protection and development " should become one of the founding principles of our future "Constitution".

Secondly there are framework actions and defence of our interests at the international level. The MEDIA programmes, the Television without Frontiers directive, cultural and audiovisual cooperation with other countries, the defence of our interests at the WTO are just some examples where action by the European Union could be useful, even essential. It is not a question of harmonisation, but of combining our forces to better defend and value our cultural diversity.

**R.T.** Do you think that the construction of an international network of public institutions concerned with problems of cultural diversity is a good idea ?

**P.L.** The promotion of cultural diversity carries a "promotion of local cultural products" aspect and also a "development of cultural exchange" aspect. It is then always useful to develop contacts, and international networks, between the authorities and institutions responsible for the definition and implementation of cultural policies.

Translated from French by William Kelleher

# Book Review

## **L'Europe en première ligne.**

LAMY, P. 1st Edition. Paris: Seuil, 2002

ISBN 2.02.055025.3

By: Martí Petit, editorial chief, *Quaderns del CAC*

In an interview with French magazine *Espirit* in 1991, Pascal Lamy defined Europe as a system made up of a public authority, the market and social agents. Any political option that failed to recognize the role of these elements (e.g., the market as an engine of finance, public authority as a body for regulation and stabilization, or social agents as channels for citizen participation) falls outside this economic and social model. In fact, the construction of Europe is based on this equilateral triangle, shared by both the social-democratic and democratic-Christian families. This two-party reality, which ensures that power is taken in turn in an organized fashion, is where Europe has to play a role in the world with its own personality. This does not mean defending immediately pragmatic interests, but rather a model of society that accepts the market without idolizing it.

It is with these beliefs in mind that Europe's Trade Commissioner Pascal Lamy raises the need to "harness" (*maîtriser*) globalization. Lamy, the interlocutor of the fifteen Member States and the European Community at the World Trade Organization (WTO), proposes a political approach towards globalization. International trade regulation is not a struggle between economic liberalism and protectionism, he says. This is an outdated approach. Globalization goes beyond a simple diversification of the exchange of goods and commodities to include matters of greater scope, such as sustainable development, the environment or public health, and questions relating to social protection, public service and cultural diversity. It is therefore not acceptable for trade policy to not contribute decisively towards social development.

One example of this position can be seen in the controversy over intellectual property rights in the field of the pharmaceutical industry. A forum by NGOs on pharmaceutical patents and public health policies was held alongside the WTO's unsuccessful Seattle conference in December 1999. The forum was the start of a campaign led by Médecins Sans Frontières (MSF) protesting that difficult access to drugs hindered the development of health policies. A central issue was the use of generic drugs (up to 100 times cheaper than their brand counterparts) in developing countries. "Treating Aids costs \$20/day in Kenya, a price that drops to 70 cents in Thailand, where the drugs used are not subject to industrial patents," MSF said.

In the wake of civil demonstrations against an "unharnessed" globalization, which was perhaps not properly reported in the *fast-food* media, the WTO set a date to discuss the issue. At the Doha (Qatar) summit in November 2001, it struck a deal between public health needs and the preservation of the pharmaceutical industry's intellectual property rights. New clauses in TRIPS (the Agreement on Trade Related Aspects of Intellectual Property Rights) made it possible to voluntarily grant limited-use licenses to developing countries. Thanks to this measure, anti-retroviral drugs are now 70% cheaper in Burkina Fasso than they were two years ago.

The US has also experienced the need to free up intellectual property rights first-hand. After September 11, US society began to be alarmed about possible carbuncle or anthrax attacks and the Bush administration was unable to guarantee public health. The Government passed the following message on to pharmaceutical companies: "Make them at a reasonable price or we will resort to compulsory licenses". This is exactly the same attitude as developing countries take in their fight against Aids and malaria. Or could it be that Aids and malaria do not represent

exceptional situations for these societies?

This episode can teach us all a lesson. Although the book is full of similar examples, we have focused on intellectual property rights for drugs to demonstrate that a different type of globalization is possible. This is where Europe can play a decisive role, by contributing a model of society that includes non-commercialized spaces. Public health and culture (the issue that concerns us) belong to society, not the market. Globalization has to accept that cultures and inter-cultural dialogue should not be commercial targets. Cultural diversity is a value in itself and should not be judged by financial profit. Who would dare to argue against biodiversity by saying that only the animal species that are profitable on the market should be allowed to survive? That only the species that provide meat for human consumption should be allowed to live?

Everybody knows that the audiovisual industry will be the most popular way of generating and transmitting culture in the 21st century. On this point, Lamy takes up the mantle from Jacques Delors, for whom he worked as head of staff during his time as president of the European Commission: "The audiovisual industry is not a commodity like other ones," he says. In fact, Lamy goes further. Faced with the US attitude of "framing" the notion of cultural diversity so as not to block market development, Lamy endeavors "to frame a market based on common values and rules, so that market development respects the diversity of cultures".

The organization that could be used as a platform for this international discussion is UNESCO (the United Nations Organization for Education, Science and Culture). On 2 November, 2001, one week before the WTO summit was due to begin in Doha, UNESCO approved the "Universal Declaration on Cultural Diversity" at a plenary session of its general conference. The declaration held that cultural rights are a part of human rights and that public policies play a leading role in the protection and promotion of cultural diversity. It argued that culture could not be left in the hands of market forces and to this end UNESCO has called for the development of an international legal instrument to monitor cultural diversity.

These types of declarations are necessary but are not enough on their own. It is also important to properly negotiate international treaties that establish commitments by the States. In Lamy's words: "A community or State has

to be able to conserve its freedom of action to apply legal and financial instruments ... to promote cultural creation and the diffusion of its creations". The EU Treaty favors this thesis. Protocol No. 32 of the treaty establishes that Member States' public broadcasting systems "are directly related to the democratic, social and cultural needs of each society and the need to preserve pluralism in the media".

It is important to build from this premise, which has been established as a pillar in the process of building Europe, to check that international trade agreements respect the spirit of the above-mentioned protocol. Lamy's words on this issue are encouraging. Remaining faithful to the spirit of the provision, the Council of Europe ratified his mandate for the next round of negotiations at the WTO as follows: "The Union will check, in the upcoming WTO negotiations, to guarantee the possibility that the Union and Member States (as was the case during the Uruguay Round) maintain and develop their ability to determine and apply their own cultural and audiovisual policies and to safeguard cultural diversity". The Council's mandate to Lamy for negotiations on audiovisual matters at the WTO is therefore very clear.

However, the position that Commissioner Lamy has to defend at the WTO is bound to face fierce opposition. The audiovisual industry is a strategic sector for the US, representing the second-biggest source of export earnings for the country's economy. As well as its commercial importance, the audiovisual industry projects American lifestyles. In fact, the US demanded that Europe open its markets to American films in compensation for the Marshall Plan, which helped rebuild Europe after World War II. The US has understood the importance of this sector for half a century and has combined public policies with private investment in a large and homogenous market to create very powerful media groups that exercise their dominant position across the world. There is therefore a great challenge facing Europe, and its Trade Commissioner in particular, at the next round of WTO negotiations, which will officially begin in Cancun (Mexico) next September.

It is therefore worth taking a look at Pascal Lamy, the person responsible for setting out the EU's common foreign-trade policy under the mandate of the Council. We can turn again to the interview published in *Espirit* in 1991 to discover more about his professional psychology. In keeping with the French tradition, Lamy was trained to work as a top-level

public servant, the category developed for key posts in the public administration. In most countries, Lamy says, economists, accountants and lawyers are recycled to work in the public service. In France, the opposite occurs: "First the public servants are created, then they are turned, nearly always provisionally, into specialists". This system prevents strategic preparation from being monopolized by "technocrats".

This is the background of the person who will represent Europeans at the WTO, and as such we can breathe easily. Pascal Lamy, a French socialist who "prefers the telephone to the megaphone" finishes his book with a bold declaration on his intentions: "(I) am determined that the next round of negotiations at the WTO will contribute to regulating globalization, framing it to include the values and collective preferences closely linked to Europeans and ensuring that trade relations follow the political angle of 'sustainable development' in the sense of the UN: of growth in the economy, respect for environmental balance in ecology and the struggle against inequality in society."

Translated from Catalan by Marc Alba

# Webs Review

## Cultural diversity

In this issue, Webs Review reviews a number of webpages relating to cultural diversity. Public bodies, associations and research professionals approach the issue from different points of view.

### **Ministère de la Culture et des Communications du Québec**

**<http://www.mcc.gouv.qc.ca/international/diversite-culturelle/esp/publicaciones.htm>**

The Ministry of Culture and Communication of Quebec defends the importance of cultural diversity and prepares reports, studies and publications. The webpage features an article by Ivan Bernier looking at the possible viability of an international legal instrument for cultural diversity.

[http://www.mcc.gouv.qc.ca/international/diversite-culturelle/106145\\_faisabilite.pdf](http://www.mcc.gouv.qc.ca/international/diversite-culturelle/106145_faisabilite.pdf).

### **International Network for Cultural Diversity**

**[www.incd.net](http://www.incd.net)**

The International Network for Cultural Diversity represents individual artists, cultural groups and industries that endeavor to counteract globalization's standardizing effects on culture. The webpage, in French, English and Spanish, offers information on the activities it carries out, such as the promotion of cultural diversity and development.

### **Media Plus Program**

**[www.mediadeskspain.com](http://www.mediadeskspain.com)**

The European Union's Media Plus program began in 2001 with the goal of strengthening the competitiveness of Europe's audiovisual industry in the international marketplace by supporting the development, distribution and promotion of European audiovisual works. It is due to end in 2005.

### **UNESCO - Culture Section**

**[http://www.unesco.org/culture/pluralism/html\\_sp/index\\_sp.shtml](http://www.unesco.org/culture/pluralism/html_sp/index_sp.shtml)**

"From diversity to pluralism" is UNESCO's motto on culture. The webpage provides information on different cultural policies, development, diversity, pluralism, cultural industries and heritage. The site includes UNESCO's Universal Declaration on Cultural Diversity.

[http://www.unesco.org/culture/pluralism/diversity/html\\_sp/index\\_sp.shtml](http://www.unesco.org/culture/pluralism/diversity/html_sp/index_sp.shtml)

It also offers other interesting documents, such as the Report on Cultural Diversity, Conflict and Pluralism for the year 2000.

[http://www.unesco.org/culture/worldreport/html\\_sp/media.shtml](http://www.unesco.org/culture/worldreport/html_sp/media.shtml)

### **Council of Europe - Cultural Co-operation**

**[http://www.coe.int/T/E/Cultural\\_Co-operation/](http://www.coe.int/T/E/Cultural_Co-operation/)**

With regard to cultural co-operation, the Council of Europe defends the development of public and democratic cultural policies that respect the principles of identity, diversity and participation. Other goals are to integrate culture into sustainable development and advise Member States on the conception, planning and management of their cultural policies. The webpage offers a comparison of the different Member States and a compendium of public policies.

**World Trade Organization**

**<http://www.wto.org/>**

The World Trade Organization (WTO) is the international body that organizes trade regulations among countries. Its agreements, negotiated and signed by most of the countries in the world, are ratified by the countries' respective national parliaments. There is currently a discussion about whether cultural goods should be included.

**RIPC – International Network on Cultural Policy**

**<http://www.incp-ripc.org>**

Close to fifty countries from around the world form part of this network or international forum that deals with cultural policies and endeavors to determine how to integrate and promote cultural diversity within a common approach towards global development.

**Culturelink**

**<http://www.culturelink.org/>**

Culturelink calls itself “the network of networks for research and co-operation in cultural development”. Established by UNESCO and the Council of Europe in 1989, it is based in Croatia. Culturelink centers its resources, studies and news on communication, industry and cultural identity.

**Latin American Observatory on Education**

**<http://www.campus-oei.org/observatorio/>**

One of the main goals of the Latin American Observatory on Education is to analyze education in all its complexity and highlight both the diversity of and common elements in today's culture in Latin America.

**Observatorio de la Educación Iberoamericana**

**<http://www.campues-oei.org/observatorio>**

One of the main aims of the Iberoamerican Education Observatory is to analyse education in all its complexity, emphasizing diversity as well as the common elements of nowadays Iberoamerican culture.

**International Francophone Organization**

**<http://www.francophonie.orf/oif.cfm>**

An organization grouping together a number of countries where French is spoken, including Egypt, Poland, Canada and Romania. Its activities are aimed at establishing lines of co-operation in different areas, including education and culture. It endeavors to preserve cultural diversity in international negotiations and supports audiovisual production, the written press and local radio broadcasters.

# CONTENTS

14

■ <b>Presentation</b>	2
■ <b>Monographic: Globalisation, audiovisual industry and cultural diversity</b>	
"Cultural exception", national policies and globalisation: imperatives in democratisation and promotion of contemporary culture <b>Divina Frau-Meigs</b>	3
The "Cultural Exception" in the World Trade Organisation (WTO): The basis of the audiovisual policy in Catalonia <b>Ramon Torrent</b>	17
The WTO Doha round: what's at stake culturally <b>Pierre Sauv�</b>	25
From defending "Cultural Exception" to promoting "Cultural Diversity": European cultural policy and the Arab World <b>Dima Dabbous-Sensenig</b>	33
"South of the West", Cultural Coordinates of the Australian Audiovisual System <b>Stuart Cunningham and Terry Flew</b>	45
Mexico in the face of globalization: audiovisual policies to promote and protect its cultural diversity <b>Laura M�rquez Elenes</b>	53
Indian Television in the Era of Globalisation: Unity, Diversity or Disparity? <b>Mira Kapil Desai</b>	59
The WTO, the Doha Negotiations and Developing Countries <b>Miguel Rodr�guez Mendoza</b>	71
Interview with Pascal Lamy, Europe's Trade Commissioner <b>Ramon Torrent</b>	75
■ <b>Agenda</b>	
Book Review	77
Webs Review	81

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