



Culture and the International Trade Rules: Issues and Outlook

Presented by

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“Culture is at the heart of a nation. As countries become more economically integrated, nations need strong domestic cultures and cultural expression to maintain their sovereignty and sense of identity.”

“... books, magazines, songs, films, new media, radio and television programs reflect who we are as a people. Cultural industries shape our society, develop our understanding of one another and give us a sense of pride in who we are as a nation.”

Cultural Industry Sectoral Advisory Group on International Trade
February 1999, Executive Summary, page i

“We must build on these: our shared history, our languages of expression, our special places, the treasures we can touch, and the treasures of the mind. They define us.”

Unique Among Nations – The Ties that Bind
Government of Canada Policy Statement, 1993
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1. INTRODUCTION

The preceding quotes reflect the terms in which the importance of culture and cultural policy goals have been expressed in Canada, the context with which the author is most familiar. Although different words and emphasis might be used, it perhaps would not be inaccurate to suggest that similar sentiments are felt in many countries around the world. It also is likely true to say that the preservation and promotion of national culture is considered to be a sovereign right and a central role of government.

It may therefore seem incongruous that cultural values, and the cultural policies and programs that governments pursue in support of those values, have become items for negotiation in international trade and economic forums. Cultural policy values are different in many fundamental ways from the economic and industrial values that have been the traditional focus of attention in trade negotiations. Yet, as the net of trade liberalization has been cast ever more widely, culture increasingly has been drawn in.

Indeed, the question of whether and to what extent cultural sectors and programs should be made subject to the international trade rules was a key issue in the Uruguay Round, the most recent multilateral trade negotiation that led, in 1994, to the creation of the World Trade Organization (WTO) and new agreements relating to trade in services (the General Agreement on Trade in Services, or GATS) as well as intellectual property rights (the Agreement on Trade-Related Intellectual Property Rights, or TRIPS). Both of these Agreements are particularly relevant to cultural sectors and creative communities. Culture also was a key issue in the 1989 Free Trade Agreement between Canada and the United States and its successor, the 1994 North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico.

The culture issue is emerging once again as a key question in current WTO negotiations aimed at a broadening and deepening of the GATS as well as in negotiations towards a Free Trade Area of the Americas (FTAA). Even though these negotiations are in early stages, proposals for the coverage of cultural programs and sectors are already on the table. They have significant implications for cultural sectors and creative communities around the world.

It is therefore important to be aware of these proposals and to assess them on an on-going basis as developments in the negotiations unfold. This paper offers a first step in that direction, providing a brief historical perspective on the issues and how they have been treated in previous negotiations and under existing trade agreements, as well as a preliminary review of proposals now being made.

2. BACKGROUND: THE TERMS OF THE DEBATE

2.1. Culture versus Commerce

The trade and culture debate has so far turned on a fundamental difference of view about the very nature of culture and cultural goods. On one side of the debate, culture is seen as being limited essentially to the “fine arts,” such as theatre, the ballet, the symphony, the art that hangs in galleries and so on. Everything else is entertainment and commerce. Thus, books, magazines, films, television programming and popular music (that is, the products of cultural industries), are considered to be commodities like any others and creating and bringing them to the market is a business to be governed by market forces alone. Cultural policies and programs are seen, therefore, as barriers to trade that must come down like others before them as part of the trade liberalization process.

On the other side of the debate, culture is seen as going well beyond the fine arts to embrace all forms of expression and communication, including the films, television programming, popular music, books and magazines that have the greatest day-to-day impact for most people. From this perspective, cultural goods and services are seen as vehicles for transmitting intangibles that are the essence of a society: ideas, values, identity and a sense of shared experience and community. As such, they have a value and significance that transcend the utility of commodities, requiring that they be treated differently in the context of the international trade rules.

2.2. Support Measures for Cultural Sectors

These different perspectives on culture lead, in turn, to conflicting views on whether and how cultural sectors should be supported through government measures. On one side of this debate, some argue that, while it may be acceptable for governments to support the fine arts through public funding, measures that provide commercial benefits to cultural industries and the creative communities that are involved in those industries are not justified. In other words, government measures can support “culture” but not commerce.

Others take the view that culture and commerce are inextricably linked and that measures supporting the economic viability of cultural industries and those who participate in those industries are not only justified, but necessary. This is because cultural industries in any given country must have the opportunity to succeed in the marketplace or there will be no channels available to bring indigenous cultural goods and services to the public. In many countries, however, markets are not large enough to allow cultural industries to achieve the economies of scale necessary to compete with the large multinational entertainment industries that now have such a prominent place around the world. In light of the realities of the competitive environment this creates, many governments intervene to ensure access to local markets for indigenous cultural goods and services.

In addition to public funding, cultural support measures can take the form of local content requirements or quotas in television and radio broadcasting as well as on film screens, controls on foreign access to advertising services markets (particularly in the broadcast sector), controls on foreign access to distribution and retail services markets, and controls

on foreign ownership. Such measures usually are directed to services rather than goods. In fact, it generally can be said that cultural support measures in most countries are not aimed at keeping foreign cultural goods out but, rather, at ensuring that local production can be viable and find a place in domestic and foreign markets alike.

3. CULTURE IN PREVIOUS TRADE NEGOTIATIONS AND UNDER EXISTING AGREEMENTS

3.1. The Key Trade Rules Relevant to Culture

In order to place the treatment of culture in previous trade negotiations and under existing trade agreements in context, it is useful to begin with a brief description of the most relevant trade rules and their purpose.

Beginning with the creation of the General Agreement on Tariffs and Trade (GATT) in 1947, the modern international trade system has been developed with the goal of: a) reducing and ultimately eliminating barriers to trade so as to provide open and secure access to markets; and, b) ensuring that market access is provided in a non-discriminatory way. Two cornerstone principles under the rules are key in that regard, i.e., national treatment and most-favoured nation, or MFN, treatment. National treatment essentially means that measures affecting access to markets must not discriminate as between domestic producers and suppliers of goods and foreign producers and suppliers of like goods. The MFN rule says that government measures affecting access to domestic markets must not discriminate as between producers and suppliers from other countries. These two basic disciplines are the most relevant with respect to proposals to bring cultural sectors more fully under the coverage of trade agreements.

Prior to the Uruguay Round, the focus was on increasing non-discriminatory access to markets for goods under the GATT (1947). Culture was not a major issue. The only “cultural” provision in the Agreement was an exception contained in Article IV relating to screen quotas for films. This Article was included in light of differences of view as to whether screen quotas were measures affecting goods and, therefore, subject to the disciplines of the GATT, or measures relating to services and, therefore, outside the GATT. Article IV removed any uncertainty in this regard by making it clear that screen quotas, as defined, were permissible under the GATT.

As mentioned, the coverage of the trade rules was then expanded significantly in the Uruguay Round with the negotiation of a new services agreement, the GATS, as well as a new agreement on the protection of intellectual property rights, TRIPS. The 1994 North American Free Trade Agreement (NAFTA) also covered services and intellectual property rights. On another front, an effort was made in the Organization for Economic Cooperation and Development (OECD) to establish a Multilateral Agreement on Investment (MAI). The MAI negotiations were unsuccessful, however, in part because of disagreement on the treatment of cultural sectors. It may be expected that investment will be included in the WTO negotiating agenda at some time in the future.

Against this background on the basic trade rules, the key point that arises for culture is whether cultural sectors should be brought fully under the coverage of those rules, particularly in terms of increased market access commitments and the comprehensive application of the national treatment and MFN principles. As will be seen in the sections that follow, the implications of doing so would be significant.

In short, if the disciplines of the trade rules were applied, the types of measures used by many governments to support cultural industries and creative communities would no longer be permissible. This is because such measures, including local content requirements or quotas, preferential or exclusive access to distribution, retail and advertising markets as well as restrictions or conditions, such as performance requirements, on foreign ownership all provide preferential treatment in some form or other to domestic cultural sectors. They thus would be contrary to national treatment and, in some cases, to the MFN rule as well. More generally, of course, they can limit access to domestic markets.

These potential implications for the continued use of cultural support measures are a common theme throughout the discussion that follows on previous trade negotiations and the agreements they produced and new negotiations now taking place.

3.2. The GATS

In order to understand how cultural sectors were addressed in the GATS negotiations and the extent to which they are currently covered, a brief description of the unique structure of the Agreement is necessary.

Under most trade agreements, including the GATT, market access obligations are established with what has been referred to as a “top-down” approach. This means that the basic commitments to provide market access, national treatment and MFN apply across-the-board to all sectors with any limitations or conditions on such access being permissible only under negotiated exceptions. In this way, everything is covered and subject to national treatment and MFN, unless otherwise specified.

The GATS, however, is structured in essentially the opposite way. Instead of being “top-down,” it represents a “bottom-up” approach, in which market access and national treatment obligations are assumed on a voluntary, sector-by-sector basis. Thus, member countries set out in their individual schedules the specific market access commitments they are prepared to make in any given sector. With this selective approach, there are no across-the-board market access obligations and national treatment does not apply except to the extent an individual country has undertaken to provide it in any given sector.

The MFN rule, however, does have general application under the GATS. This means that any market access commitments a country is prepared to make must be extended to all member countries on a non-discriminatory basis. As mentioned, however, there is nothing in the GATS that requires countries to make such commitments in the first place. It should be noted that many countries took exceptions to the MFN rule to preserve existing measures and programs that do provide preferential treatment to some WTO

member countries as opposed to others. For example, Canada and other countries took MFN exceptions for co-production agreements relating to film and television programming that provided certain market access benefits to co-production partners but not other countries.

In the GATS negotiations, the U.S. worked hard to obtain market access and national treatment commitments in cultural sectors. Few countries were prepared to respond. In fact, the EU proposed that cultural sectors should be exempted all together. Although this proposal for a cultural exemption enjoyed considerable support in principle, it was opposed by the U.S. and ultimately did not succeed. Instead, most countries simply declined to make any market access commitments in the cultural sectors, meaning that a *de facto* exemption for culture was achieved by the majority of countries that did not include cultural sectors in their schedules of market access commitments. In this way, their ability to maintain cultural policies and programs was preserved.

3.3. TRIPS

The TRIPS negotiation was another focal point for the culture issue in the Uruguay Round. Several proposals relating to copyright were made, mainly by the U.S., which also would have limited, if not prohibited, many types of cultural programs. To understand these proposals, it once again is necessary to briefly describe the structure of TRIPS and the nature of the rights and obligations it contains.

The TRIPS Agreement begins by incorporating the standards of intellectual property protection contained in treaties under the World Intellectual Property Organization (WIPO), including the *Berne Convention (1971)* and the *Rome Convention* relating to copyright. These standards of protection, with some minor modifications, are then made enforceable through the WTO binding dispute settlement system. The TRIPS Agreement thus deals with a longstanding weakness in the WIPO treaties, which had always been hampered by a lack of effective enforcement. In terms of the nature of the obligations involved, TRIPS essentially addresses the private right of copyright owners to prevent unauthorized use of their works. It does not, however, guarantee access to foreign markets for copyrighted goods or services. Market access is outside the scope of TRIPS, being dealt with instead in the GATT and GATS.

The proposals made during the Uruguay Round once again centered on national treatment. There is only one area of copyright where national treatment applies under TRIPS. This relates to the rights of authors as contained in the *Berne Convention*, which itself operates on the basis of national treatment. Thus, Article 3.1 of TRIPS sets out a corresponding national treatment obligation for authors by reference to *Berne*.

Article 3.1 also refers to the *Rome Convention*, which establishes rights for performers, producers of phonograms and broadcasting organizations, or so-called “neighbouring rights.” *Rome*, however, provides for reciprocity, not national treatment, meaning that benefits typically would only be extended to other Rome countries. Article 3.1 of TRIPS preserves this reciprocity approach. This became the key issue in the TRIPS negotiations

since the U.S. did not at the time recognize neighbouring rights in its domestic law and was not a member of *Rome*.

The U.S. therefore pursued a number of proposals aimed at replacing reciprocity with a national treatment obligation for neighbouring rights. Generally, it sought recognition of and national treatment for so-called “contractual rights.” This refers to the system used in the U.S. under which the rights of performers and other participants in a copyrighted work are assigned by contract to producers. If the U.S. had succeeded in obtaining national treatment for contractual rights, U.S. producers would have obtained rights in other countries to receive royalties that otherwise would be due directly to performers and other neighbouring rights beneficiaries.

Such an outcome was unacceptable to many other countries for two main reasons. First, U.S. producers would have received royalties from other countries that provided neighbouring rights, but rights holders in other countries would receive no corresponding benefits from the U.S. where their rights were not protected. Secondly, countries that had strong neighbouring rights traditions objected to the U.S. system in which producers could acquire those rights under contract. It should be noted that the U.S. subsequently recognized neighbouring rights on a national treatment basis for digital media. It has never done so, however, for analogue works. So far royalties payable for digital works are minimal.

In addition to its effort to obtain national treatment for contractual rights in the TRIPS negotiations, the U.S. also sought to expand the nature of the rights to be established under the Agreement. In this regard, it sought the inclusion of a reference to the “enjoyment” of rights in the definition of the scope of copyright protection. Such language could have had the effect of converting the basic right to prevent unauthorized use of a copyrighted work into a market access guarantee for copyrighted goods and services. This is because measures like local content requirements or quotas in broadcast or on film screens could be seen to be interfering with the full enjoyment of the economic rights in copyright.

These U.S. proposals did not succeed. As will be discussed further below, however, variations on this theme are now resurfacing in current negotiations under the GATS.

3.4. NAFTA

Culture also was an important issue in the negotiation of the North American Free Trade Agreement between the U.S., Canada and Mexico as well as its predecessor, the Free Trade Agreement (FTA) between the U.S. and Canada. In both agreements, Canada insisted on a complete exemption for cultural sectors. The cultural exemption makes it clear that these sectors remain completely outside the coverage of the Agreements. At the same time, however, the U.S. reserved the right to retaliate in any goods or services sectors with measures of “equivalent commercial effect” against any cultural measures taken by Canada that would have violated the FTA if not for the cultural exemption.

The cultural exemption was particularly important in NAFTA, given that, unlike the FTA before it, services and intellectual property rights were covered. Moreover, full national treatment for copyright, along the lines sought unsuccessfully by the U.S. in the TRIPS negotiations, was included in NAFTA. The cultural exemption allowed Canada to avoid the use of that national treatment provision by the U.S. to challenge various measures, including content quotas in broadcast and the reciprocity approach under the Canadian Copyright Act (this was relevant, for example, to the ineligibility of U.S. producers to receive payments from Canada's blank audio tape levy).

The cultural exemption has been effective in sheltering Canada's existing cultural policies and programs. A flaw in the exemption has become apparent, however, in terms of how the U.S. interprets and has used the retaliation clause. This problem arose in a bilateral dispute concerning a measure Canada intended to take to limit access to the advertising services market in the magazine sector. Canada believed that its proposed measure was entirely consistent with its obligations under NAFTA and that the retaliation provision did not apply. The U.S., however, threatened massive retaliation aimed at other industry sectors including steel, plastics and forest products. The political pressure that this threat generated caused the Canadian government to abandon its proposed measure.

While legally sound, therefore, the cultural exemption can be rendered ineffective by retaliation threats, whether justified or not. It should be noted that Canada has obtained cultural exemptions in bilateral free trade agreements with Chile, Israel and Costa Rica, but without the retaliation provision. It is highly questionable, however, whether a NAFTA-style cultural exemption, let alone one that did not include the retaliation right, would be negotiable with the U.S. in any current or future regional or multilateral negotiations. In any event, the NAFTA model has been found to have serious limitations.

4. CURRENT TRADE NEGOTIATIONS

4.1. The New Round under the GATS

The current negotiations under the GATS were initiated early in the year 2000 pursuant to a requirement for such further negotiations in the Agreement itself. The new GATS round, therefore, is a key element in the so-called "built-in agenda" of WTO negotiations. The issue of the coverage of cultural sectors under the GATS is basically being picked up where it was left off, with some variations in approach. It is once again U.S. proposals that are largely driving the discussion.

The overall objective of the negotiations is to broaden and deepen the market access commitments of member countries. The current intention is to do so within the "bottom-up" approach reflected in the Agreement as it now stands. Thus, it once again will be up to member countries to specify what new commitments they will be prepared to make. The pressure to assume substantial commitments, however, will be great.

With respect to the cultural sectors, the U.S. is once again setting the pace, making it clear that its goal is to bring all cultural sectors under the GATS, with the full application, in principle, of the national treatment rule. As mentioned, the MFN rule already applies,

although some MFN exceptions were taken in the cultural area. There also may be pressure to eliminate such exceptions.

The “bottom-up” structure of the GATS, however, makes it more difficult to negotiate the more comprehensive coverage the U.S. is seeking. It therefore has proposed some new modalities for the negotiations aimed at aggregating sectors or creating “clusters” of sectors to facilitate the negotiation of horizontal obligations to the extent possible. The objective and potential implications of this approach can be seen in initial proposals that have been made by the U.S. relating to audiovisual services.¹

The U.S. proposal seeks to define the audiovisual sector very broadly in order to aggregate the range of services that would then be negotiated as a “sectoral unit.” Thus, the U.S. is suggesting that the audiovisual sector should include various distribution activities, including delivery of motion pictures via satellite or digital networks, retailing of sound recordings and advertising services. This would capture activities that so far have been defined and covered separately under GATS. Moreover, the U.S. also includes intellectual property rights, including the licensing of films, licensing of rights for broadcast on radio or television and “acquiring distribution rights to programming of others.” The implications of bringing these copyrights into the GATS negotiations could be significant. At the very least, this would appear to be a renewed effort on the part of the U.S. to convert intellectual property rights into market access rights.

Having cast the proposed coverage of the audiovisual sector very widely, the U.S. then proposes comprehensive market access commitments and the horizontal application of the key national treatment obligation. For the first time, the U.S. does acknowledge in its proposal the need to ensure the preservation and promotion of cultural identity and diversity and suggests that some scope might be available for countries to take limited exceptions to market access commitments to address cultural concerns. The extent to which such exceptions might be negotiable, however, is very unclear. In addition, country specific exceptions likely would be subject to period review and a phasing-out over time. This is the approach that generally applies in the WTO.

The U.S. audiovisual proposal also suggests that special rules on the use of subsidies in support of cultural industries and creative communities should be considered. The proposal calls for the recognition of “carefully circumscribed subsidies for specifically defined purposes” to “nurture local culture.”² The implication is that such subsidies would not be vulnerable to attack through the imposition of countervailing duties. The benefits of this proposal, however, are unclear.

It first should be noted that there currently are no rules in the WTO on the use of subsidies in service sectors. Although disciplines against the unfair use of subsidies have been included under the GATT for many years, they have yet to be introduced for services. The question is now under discussion in the current GATS negotiations, but it is unclear at this stage whether agreement will be reached.

¹ WTO document S/CSS/W/21, December 18, 2000

² Ibid, page 3

At present and perhaps continuing into the future, therefore, countries are at liberty to use subsidies as they see fit with no risk of challenge or penalty. Accordingly, any subsidy rules that might be negotiated for audiovisual services would only go in one direction, i.e., towards the establishment of disciplines that do not now exist. It may be true to say that subsidy rules will at some point be included in the GATS (although, as mentioned, this is uncertain) so that there might be advantage in seeking more liberal treatment of subsidies for the audiovisual sector. The language of the U.S. proposal, however, referring to “carefully circumscribed subsidies for specifically defined purposes” suggests that the disciplines could, in fact, be tight.

Few countries other than the U.S. have made proposals addressing the treatment of cultural sectors or audiovisual services in the current negotiations. Only Switzerland and Brazil have so far made specific submissions in that regard.

In its submission,³ Brazil suggests that the key question with respect to audiovisual services is “how to promote the progressive liberalization of the sector in a way that creates opportunities for effective market access for exports of developing countries in this sector without affecting the margin of flexibility of governments to achieve their cultural policy objectives as they find appropriate. Brazil flags a number of issues in this regard, including the use of subsidies and the possible need for safeguard measures and competition policy remedies in the sector. Brazil also suggests that focused discussions be held in the Special Session of the Council.

Switzerland’s submission⁴ identifies a range of issues that arise and discusses the economic and cultural objectives in play. Interestingly, Switzerland also mentions the possible use of competition policy instruments to prevent “anti-competitive behavior such as abuse of dominant positions.”⁵ Switzerland does not make any substantive proposals at this juncture, however, suggesting instead that issues arising in the audiovisual sector and on culture more generally should be the subject of a focused discussion in the Special Session of the Council for Trade in Services, the main negotiating body for the current round, which ultimately could lead to the negotiation of an Annex to the GATS on these matters. The difficulty that arises with this proposal is that the Swiss proposal essentially would entail a negotiation on cultural policy matters. As discussed further below, however, the WTO has neither the mandate nor competence to address cultural policy at the international level.

The EU has so far not made any specific proposals on culture generally or the audiovisual sector in particular in the current GATS negotiations. The European Commission, however, has previously indicated that the EU and its member states will “... maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity.” The positions of individual member states may vary, however, and how the EU approach might evolve remains to be seen.

³ S/CSS/W/99, July 9, 2001

⁴ WTO document S/CSS/W/74, May 4, 2001

⁵ Ibid., page 3

4.2. The FTAA

Proposals with significant implications for cultural sectors also are being advanced by the United States in the FTAA negotiations, although there is one significant difference in the U.S. approach here compared to its approach in the GATS. In the FTAA negotiations, the U.S. is proposing a “top-down” approach for services, thus departing from the structure of the GATS. This would result in the comprehensive coverage of cultural sectors and an across-the-board application of the national treatment and MFN rules.

As is the case with the GATS process, it is still relatively early days in the FTAA negotiations, although procedural questions such as the approach to be taken with respect to services are under active discussion. Although final decisions have not been reached, there does appear to be an assumption that U.S. insistence on the “top-down” approach will be difficult to resist. This not only has significant implications for the FTAA, it also could have an impact on the GATS. Any more comprehensive approach in the FTAA could lead to renewed pressure in the GATS negotiations to either adopt the “top-down” architecture or at the very least use one of the modalities that would facilitate the negotiation of more comprehensive coverage.

It also should be noted that there are proposals for the inclusion of a Chapter on investment in the FTAA. These proposals are very preliminary and it is not yet clear what the scope of coverage might be or what specific disciplines might apply. It would seem, however, that a liberalization if not elimination of foreign ownership restrictions in cultural sectors will be sought along with the elimination of performance requirements (e.g., local content quotas). The coverage of intellectual property rights as investments can also be anticipated, raising important questions about potential implications for cultural policies and programs that provide preferences, for example through content quotas or access to advertising services markets, for local cultural sectors.

Canada is the only country other than the U.S. that has so far taken a public position on the treatment of cultural sectors in the FTAA negotiations. Canada is arguing, as it has done in the past and is also doing in the GATS, that cultural goods and services are unique and should be given special treatment in the context of trade agreements. Accordingly, the Canadian position has been that culture should not be on the FTAA (or GATS) negotiating table until international consensus has been reached on the underlying cultural policy issues. This is in reference to the initiative aimed at the creation of a New International Instrument on Cultural Diversity, which Canada strongly supports.

In keeping with this approach and to establish a basic context for culture, Canada has proposed the following language for inclusion in the FTAA preamble:

“RECOGNIZING that countries must maintain the ability to preserve, develop and implement their cultural policies for the purpose of strengthening cultural diversity, given the essential role that cultural goods and services play in the identity and diversity of society and the lives of individuals ...”

5. OUTLOOK

As mentioned, the GATS and FTAA negotiations are still in preliminary phases. Substantive bargaining has yet to begin and it is not clear what the timeframe will be for conclusion of the negotiations. In the case of the GATS, the process is hampered by the 1999 failure in Seattle to launch a broader round of negotiations in the WTO and the continuing difficulty in getting such a broader round under way. A further attempt to launch a new Round may be made at the WTO Ministerial Meeting scheduled for this November in Doha, Qatar. At this time, however, the prospects for success are not good. The GATS negotiations will continue regardless of whether a broader round of negotiations in the WTO is launched. Many countries, particularly developing countries, however, will continue to be reluctant to assume new obligations under the GATS in the absence of an opportunity to obtain improved benefits under other WTO Agreements not yet open for further negotiation.

The FTAA process might have better prospects for forward movement, but it, too, has been subject to various impediments. It has given rise to considerable criticism and opposition from public interest groups, which may make it difficult for some governments to move forward rapidly. At the same time, some countries are not yet ready to fully engage in the process due either to other regional preoccupations or a desire to obtain some concessions, particularly from the United States, before fully committing to the process.

Overall, therefore, the pace of both negotiations might continue to be slow for the foreseeable future. It is nevertheless important to monitor developments and make representations to governments as appropriate, since many of the issues that are currently under discussion relating to cultural sectors will have an impact on how the substantive negotiations are eventually conducted.

Finally, there is one other key and overarching issue that needs to be addressed. That is the continuing lack of understanding and consensus in the WTO and other trade forums on the basic issues relating to cultural policy and cultural diversity that underlie the trade and culture debate. The reality is that the debate, in the first instance, is not about trade and economic policy, but about cultural policy. The cultural policy issues, however, have yet to be addressed in their own right. Until some consensus is reached at the international level with respect to what cultural policy objectives are valid and justifiable and what measures national governments should be able to use in pursuing those objectives, the trade-related issues likely will continue to defy resolution.

The WTO and other trade forums, however, have neither the mandate nor expertise to determine cultural policy issues. That is why the initiative aimed at the creation of a new Instrument on Cultural Diversity assumes importance. International consultations in an appropriate forum and with the participation of government officials with responsibility for cultural policy, representatives of the cultural community through their associations, and other experts in the field are the best means to pursue consensus on cultural

questions. Such consultations and the new Instrument on Cultural Diversity that may result could then provide a framework within which trade-related issues could be more constructively addressed in the WTO.

6. CONCLUSION

The above discussion has been intended to provide an overview of how cultural sectors and programs have been dealt with in previous trade negotiations and under existing trade agreements as well as proposals that are now being made for the coverage of culture in current negotiations under the GATS and in the FTAA. These latest proposals hold significant implications for cultural industries and creative communities around the world and should be monitored closely as the negotiations proceed.

The bottom line is that if cultural sectors and programs were brought fully under the coverage of the trade rules, most if not all the types of support measures currently used by governments in many countries would no longer be permissible. The only instrument that might remain would be public funding. It is not clear, however, that the treasuries in many countries could support the level of funding that might be required to replace the other types of measures countries currently rely on. Moreover, the possible application of new rules on subsidies could place limits on the use of public funding that do not now exist.

The stakes, therefore, are high for cultural industries and creative communities around the world. Moreover, it is not clear that their interests can and will be taken fully into account in the context of negotiations in trade and economic forums that have no mandate or expertise to address cultural policy issues. The pursuit of the proposed new International Instrument on Cultural Diversity could play an important role in providing a forum more suited to addressing those issues as well as an eventual framework for discussion in the WTO and other trade forums on trade-related issues.