

the trade versus culture discourse: tracing its evolution in global law

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trade versus culture: the onset of the battle

- **post WW I origins: previous lower tradability of cultural products; European cinema vs Hollywood**
- **GATT 1947: screen quotas (art. IV)**
- **CUSFTA 1988 / NAFTA 1993**
- **symptomatic: the cultural exception argument *is* accepted; narrow focus on audiovisual media**

trade versus culture: the clash

- **the Uruguay Round (1986-1994)**
- **‘exception culturelle’**: exempt all culture-related trade in services and goods from the WTO agreements
- **still, focus on audiovisual services**
- **the ‘agreement to disagree’**
- **GATS encompasses all services but substantial flexibilities built-in**: positive committing for MA and NT; MFN exemptions
- **audiovisual services**: the least committed sector

trade versus culture: forum-shopping

- **from WTO to UNESCO**
- **from ‘cultural exception’ to ‘cultural diversity’**
- **2005 UNESCO Convention on Cultural Diversity**
- **critique:** (i) lack of binding obligations; (ii) substantive incompleteness; and (iii) ambiguous relation towards other international instruments
- **soft rather than hard law**

UNESCO Convention: impact

- **vis-à-vis the WTO**
 - formation of negotiation bloc unlikely
 - Doha talks
 - perpetuation of the status quo
 - *China – Audiovisual Products*
- **outside the WTO: bilateral and regional agendas of the US and the EU**
- **UNESCO: a flurry of activities, practical effect questionable?**

international regime complexity

- **multiple overlapping, non-hierarchical regimes**
- **starkly diverging positions of the EU and the US → ambiguity will persist**
- **greater uncertainty and unpredictability**
- **mismatch between ‘trade and culture 1.0’ rules and the transformed media landscape**
- **path dependence not advantageous for formulating future-oriented cultural policy**

thank you.

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