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CDCC-BU (2000) 9

**COUNCIL FOR CULTURAL CO-OPERATION (CDCC)**

**Meeting of the Bureau  
Strasbourg, 24-25 May 2000**

**CULTURAL POLICY AND INTERNATIONAL TRADE –  
AN ASSESSMENT**

Secretariat Memorandum  
prepared by Directorate General IV  
(Education, Culture, Youth and Sport, Environment)  
with contributions from Verena Wiedemann and Jukka Liedes

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**DRAFT DECISION:****The CDCC Bureau:**

| - examined document CDCC-BU (2000) 9 on cultural policy and international trade;

Poistettu: information

| - approved the general outline of the document;

Poistettu: ?)

- asked the Culture Committee:

- (i) to prepare a document taking into account the basic values of the Council of Europe with a view to elaborating a strategy which would reconcile the concerns of cultural diversity with those of international trade agreements;
- (ii) to take into consideration, when preparing the above-mentioned document, the observations made by delegations of the CC-CULT and the CDCC (Appendix to CDCC-BU (2000) 9 and CDCC-BU (2000) 9 Addendum);
- (iii) to finalise this document in consultation with other Council of Europe Steering and /or Specialised Committees and in contact with other relevant international organisations;
- (iv) to prepare, in consultation with other relevant bodies of the Council of Europe, a draft text for a Declaration on cultural diversity with a view to contributing to international discussions; a joint meeting of representatives of the CDCC and the CDMM could be envisaged to this end;
- (v) to intensify its participation in the international discussions on cultural diversity and international trade;
- (vi) to continue to raise the awareness of member States of the complex relationships between cultural and trade policy measures and objectives, where possible in co-operation with the European Union;
- (vii) to submit the drafts of the strategy document and the Declaration on cultural diversity to the next meeting of the CDCC Bureau in November 2000.

## INTRODUCTION

During its 68<sup>th</sup> session, on 19 – 21 January 2000, the CDCC examined the information on cultural policy and international trade and investment agreements, as set out in document CDCC (2000) 18 and asked the Culture Committee:

- (i) to elaborate, in co-operation with the European Union and in consultation with the Steering Committee on the Mass Media (CDMM), an analysis of the problems involved, with a view to allowing the Council of Europe:
  - to contribute to the international discussions on a possible conflict between international trade and cultural policies;
  - to raise the awareness of its member States on the importance of instruments to support cultural policies;
  - to fully play its role as a guardian of cultural diversity;
- (ii) The CDCC asked the Culture Committee to submit this analysis to the CDCC Bureau at its next meeting in May 2000.

The Secretariat organised accordingly a second brainstorming meeting of experts on 4 February 2000 in the Paris office of the Council of Europe<sup>1</sup>. The meeting was chaired by the Chairman of the Culture Committee, Mr Bernard Wicht, and attended by the same experts as the first meeting (except Ms Castellina).

Building on the conclusions of the first meeting and as the outcome of the second meeting, Ms Verena Wiedemann finalised the draft text “*Impact of WTO Rules on the Cultural Instruments of the Council of Europe*” in order to submit it to the Culture Committee’s 20<sup>th</sup> meeting<sup>2</sup> and Mr Jukka Liedes agreed to draft a more general text on cultural diversity and international trade, text which was also submitted by the Finnish Delegation to the Informal Meeting of EU Ministers of Culture and Audiovisual meeting in Lisbon on March 30 and 31, 2000.

The elaboration of this document is important insofar as it will constitute, when the time comes, the Council of Europe’s contribution to the general debate which will be held within other institutions, in particular in the European Union and UNESCO.

At their 707<sup>th</sup> meeting (26 April 2000), the Ministers’ Deputies examined and took note of the abridged report of the CDMM in which the CDMM “proposed to Council for Cultural Co-operation (CDCC) that a joint working arrangement be made for consideration of this question”.

**Poistettu:** Subsequently, during its meeting, the Culture Committee asked the Secretariat to entrust the consultant expert with the completion of document CC-Cult (2000) 27. The revised version is enclosed to this document.¶

<sup>1</sup> First such meeting was organised on 8 January 2000 also in the Council of Europe office in Paris. The report of that meeting and the list of participants is included in the document CDCC(2000) 18.

<sup>2</sup> The text was submitted as the document CC-Cult(2000) 27.

During its meeting on 27 April 2000, the Rapporteur Group on Education, Culture and Sport (GR-C) agreed to continue consideration of this question in the light of the discussion to take place at the CDCC Bureau meeting in May. Further information on the GR-C meeting will be made available to the CDCC Bureau members.

## **I. IMPACT OF WTO RULES ON THE CULTURAL INSTRUMENTS OF THE COUNCIL OF EUROPE**

### **A Preliminary Inventory**

The CDCC of the Council of Europe is examining the question of possible contradictions between international trade law and cultural policies. The following note addresses some of the questions arising in this context with an emphasis on the possible implications for the cultural, and, to a more limited extent, for audio-visual policy instruments of the Council of Europe, while other cultural products,<sup>3</sup> such as books and music, will be treated only briefly.

#### **1. WTO: Background**

The World Trade Organisation (WTO) has been in existence since 1995. It succeeded the General Agreement on Tariffs and Trade (GATT) founded more than 50 years ago. The present multilateral trading system emerged as a result of successive trade negotiations, so-called rounds. The latest round, the Uruguay Round, lasted from 1986 to 1994 and led to the creation of WTO.

WTO has over 130 members. Together, these countries account for over 90% of world trade. The underlying purpose of the system is to make trade flow as freely as possible by lowering and eventually removing trade barriers and, consequently, to contribute to economic growth and welfare through the promotion of economic activity and employment on a global basis.

A number of agreements have been concluded within the framework of WTO. Traditionally, they have dealt with trade in goods. In 1994, WTO member states for the first time also concluded an agreement on services, the General Agreement on Trade in Services (*GATS*) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*). The overall principles of all WTO agreements are the same. For example, a country should not discriminate between its trading partners, but instead should treat all of them equally (the "*most-favoured-nation clause*"), and it should not discriminate between its own and foreign products, services or nationals (the "*national treatment clause*"). However, the way these rules are applied differ between the various agreements.

Compliance with the agreements in case of a trade dispute between WTO member states is ensured via a *dispute settlement procedure*. While such a procedure already existed under the old GATT, the new system for the first time has real "teeth". If a member considers a trade policy measure or some other kind of action taken by another party to an agreement to be in violation of WTO rules, it can call for the setting up of a

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<sup>3</sup> Products comprise both goods and services.

dispute settlement panel made up of three trade experts. While an appeal is possible, the member losing the case cannot block the adoption of the ruling and is required to comply with the findings within a short period of time. In the event of non-compliance, the member having won the case can ultimately be authorised to apply heavy trade sanctions against the other party.

## **2. GATS: Overview of rules and mechanisms**

GATS covers all internationally traded services except those provided in the exercise of governmental authority. Under the Agreement, each member state must indicate which sectors of its services markets it is willing to open to foreign business. Thus, states can limit the degree of market access and national treatment commitments. The third principle, the most-favoured-nation principle (MFN), generally applies to all services sectors outright. However, member states may take exemptions from this obligation, but in principle only once and for a limited period of time of up to ten years.

GATS comprises a framework agreement with articles of a general nature (e.g. the transparency and proportionality requirements for domestic regulation), and the Annexes. The latter include schedules which contain the *specific commitments* regarding the two disciplines of market access and national treatment, as well as any exemptions from the MFN obligation. In these schedules, member states indicate in detail to which kinds of supply of services their commitments extend. There are namely four different modes of supply: cross-border, consumption abroad, commercial presence, and presence of natural persons.

The negotiations about the further liberalisation of GATS commenced officially on 1. January 2000, even though the WTO Ministerial Conference in Seattle in November 1999 ended without a mandate for a new round. This is because the GATS Agreement has a so-called *built-in agenda* which is independent of such a mandate. The objective of the automatic agenda is to further deepen and broaden the liberalisation of all services sectors, and to begin these negotiations at the latest five years after the coming into force of the agreement establishing WTO.

## **3. Application of GATS to the instruments of the Council of Europe**

The GATS covers all cultural and audio-visual services, because no general "cultural exception" was agreed upon during the Uruguay Round. Nonetheless, the instruments of the Council of Europe applying to cultural and audio-visual services are so far essentially unaffected. This is because most WTO members made no commitments to liberalise these markets and they negotiated far-reaching exemptions. However, because Article XIX of GATS requires member states to negotiate a further liberalisation of trade in services as of January, 2000, the results of the Uruguay Round are in question.

The following analysis of how policy instruments of the Council of Europe may be affected by the further liberalisation of services sectors will focus on three main instruments, namely

- a) *European Convention on Cinematographic Co-Production*;
- b) *Eurimages* and
- c) *European Convention on Transfrontier Television*<sup>4</sup>.

i. ***Most favoured nation (MFN) principle (Art. II)***: advantages granted to service suppliers in one country must be extended to all other WTO members - "favour one, favour all".

*Council of Europe instruments principally affected:*

The fund created under the *Eurimages* Partial Agreement to provide grants and loans for co-productions involving at least three member states of the Agreement. This fund might become available to all producers of cinematographic and audiovisual works residing in any of the member states of GATS.

The entitlement of European cinematographic works covered by the *European Convention on Cinematographic Co-Production* to benefits granted to national films by each of the parties to the Convention participating in the co-production concerned. Such national benefits might have to be extended to all GATS member countries.

The obligation to ensure that broadcasters reserve for European works a majority of their transmission time contained in the *European Convention on Transfrontier Television*. This preferential treatment of works falling within the definition of "European" might have to be extended to all GATS parties.

Most WTO member states, including the European Union, have availed themselves of the possibility temporarily to opt out of this obligation as far as cultural and audiovisual services are concerned. A total number of eight MFN exemptions have been scheduled by the EU and its member states, three of which are particularly relevant to the above mentioned Council of Europe instruments.<sup>5</sup>

Regions of the world that are, according to the criteria set out in Art. V GATS, sufficiently economically integrated, such as the European Union, are not required to extend these benefits to WTO third parties under the MFN clause. However, the Council of Europe does not fulfil the criteria of a sufficiently integrated economic region. Thus, trade benefits granted by its members to each other under the above mentioned Council of Europe instruments are subject to the MFN obligation.

ii. ***National treatment principle (Art. XVII GATS)***: requires not to treat foreign suppliers worse than domestic ones.

This principle applies only if, and to the extent that, a WTO member has made specific commitments in the Schedule attached to Art. XVII. Most WTO members, including the EU, have made no such commitments in the area of audio-visual services.

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<sup>4</sup> See also the Secretariat Memorandum prepared by the Directorate General of Human Rights of the Council of Europe for the Standing Committee on Transfrontier Television, Strasbourg, 22. February 2000, dealing with the "Articulation between the cultural diversity goals of certain Council of Europe instruments and trade liberalisation in the WTO framework".

<sup>5</sup> See above, page 3.

Depending on the specific commitments that might be made by the member states of the Council of Europe in this area in the future, the following instruments may be affected:

The *European Convention on Cinematographic Co-Production* entitles European cinematographic co-productions falling within the scope of this Convention to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to the Convention participating in the co-production concerned. Parties to the Convention having made national treatment commitments may have to extend this entitlement to multilateral co-productions with partners coming from all WTO member countries. The same result could be envisaged with respect to the *Eurimages* fund. Similarly, applying the national treatment principle to the quota system of the *Transfrontier Television Convention* would mean having to grant all audio-visual works produced in all GATS member countries the same preferential access to transmission time of European broadcasters as is presently granted to European audio-visual works only, thereby rendering the system meaningless.

- iii. **Market access principle (Art. XVI GATS):** prohibits non-discriminatory measures unduly restricting market access.

Like in the case of national treatment, WTO member states must enter into specific commitments in order for this principle to apply, and the EU and other WTO members did not offer such commitments with respect to audio-visual services.

However, the application of this principle could in future affect the *European Convention on Transfrontier Television*. Market access commitments for audio-visual services may be considered incompatible with requiring member countries to ensure that their broadcasters reserve for European works a majority proportion of their transmission time. Also, since the principle refers to modes of supply, a producer entering a foreign market, the *European Convention on Cinematographic Co-production* granting benefits to production companies or producers with a specific nationality established in the Parties to the Convention could be negatively affected. The same consideration applies with respect to the benefits granted to producers under the *Eurimages* fund.

- iv. **Subsidies (Art. XV GATS):** Although GATS does not yet contain rules on subsidies, the present Agreement already recognises that such practices may distort trade in services under certain conditions. Therefore, GATS member countries have already committed themselves to entering into negotiations about a clause on subsidies starting as of January, 2000 with a view to creating multilateral disciplines.

If and when such multilateral disciplines on subsidies come into effect, both the *Eurimages* and the *Co-production Convention* might be negatively affected to the extent that they would be considered as distorting trade in services. The public funding of *public service broadcasters*, for example via a licence fee, might also be called into question under such a rule. The Council of Europe has recognised repeatedly that public service broadcasters constitute an indispensable part of European audio-visual policy.

- v. ***Transparency and proportionality of domestic regulation (Art. III and VI GATS)***: Once GATS member countries have entered into specific commitments with respect to certain services sectors, these requirements restricting the scope and flexibility of national regulation also apply. Thus, audio-visual regulation in the member states of the Council of Europe resulting from the *Convention on Transfrontier Television*, such as the protection of minors or restrictions on advertising on broadcasting channels, might be scrutinised by a GATS panel.

#### **4. GATT or GATS: Definitions of cultural services and products**

In the internet world where cultural works, such as music, books or audio-visual productions are delivered electronically on-line, a debate among WTO trading partners has emerged whether to treat these products as goods or as services. This distinction has far reaching consequences for the extent to which member countries can maintain their cultural policies.

The *General Agreement on Tariffs and Trade* (GATT) provides for a much more liberal trade regime for goods than GATS does for services. GATT does not allow for MFN exemptions and generally provides for national treatment unless specific exemptions are made. The Agreement itself already contains specific provisions relevant to culture.

On the one hand, measures protecting "*high culture*", namely the national cultural heritage of artistic, historic or archaeological value is explicitly exempted from the scope of the GATT (Art. XX f.) as long as such measures do not arbitrarily and unjustifiably discriminate between countries with similar conditions. On the other hand, because the production and distribution of *sound recordings* fall under the GATT provisions, it has occasionally been argued that content quotas prohibiting broadcasters from playing more than a maximum of 50 % of music from sound recordings originating abroad violate the national treatment principle of Art. III GATT.

Similarly, it is being argued that cinematographic films on celluloid or stored on other tangible fixtures also fall under the provisions applicable to trade in goods. This conclusion is based, in particular, on the wording of Art. IV GATT. According to this provision, WTO member states may restrict cinema access of foreign films only by means of so-called screen quotas.

Neither the GATT nor the GATS provide any workable definition of a "service". Definitions offered to distinguish between goods and services include, for example: "A service is a deed, a performance, an effort in opposition to goods which are objects, devices, things...Goods are objects of property rights (absolute rights in a thing), while services consist in obligations." Or: "Services are all commercial activities that are not directly represented in tradable, tangible products."

These distinctions leave much to be desired if applied to the cultural and audio-visual sectors. Broadcasters and film producers consider themselves as part of the services industries. They do not distinguish between the production of television and cinema films or between different modes of their supply to audiences. Accordingly, during the Uruguay Round the audio-visual sector was treated *en bloc* as part of the services negotiations.

In conclusion, absent any authoritative and binding decision generally to apply either the GATS or the GATT to audio-visual productions, and despite the economic unity of the audio-visual sector, two different trade regimes apply, i.e. the liberal rules on goods and the more restrictive rules on services. The sale and dispatch of a video cassette containing a cinematographic work to a broadcaster is considered as a trade in a good, while the mere sale of the transmission rights of that same work and its delivery to that broadcaster via satellite is considered as a service.

This ambiguous situation provides the background for the present debate about the position taken, in particular, by the US and Japan with respect to digital products which have physical equivalents, such as books or movies. These countries argue that such products delivered on-line constitute "virtual goods" covered by GATT. This would mean that films broadcast on television are services, while the same films broadcast on-line would represent goods, even though no tangible good is involved. Similarly, the major music distributors in the world now argue that music distributed over the internet should be treated as goods under the provisions of the GATT and not as services.

In contrast, the WTO Council for Trade in Services stated in a Progress Report to the General Council dated 19 July 1999:

"It was the general view that the electronic delivery of services falls within the scope of the GATS, since the Agreement applies to all services regardless of the means by which they are delivered...It is also the general view that the GATS is technologically neutral in the sense that it does not contain any provisions that distinguish between the different technological means through which a service may be supplied."

Similarly, the European Commission has stated:

"Films, news, music, games and multimedia contents are services. They are not tangible and do not have any entity on themselves. When they are incorporated in goods (tape, CDs, paper) they remain being services. In the absence of the goods (tapes, CDs or paper) the services nature of the product is the only relevant one."

Member States of the European Union support the European Commission in its rejection of the concept of "virtual goods".

## **5. Possible Solutions for Protecting Cultural Diversity**

The General Affairs Council of the EU, meeting on 29 October 1999, included the following statement on cultural diversity in its mandate to the Commission for the upcoming GATS negotiations:

"With respect to cultural diversity the Union will watch during the upcoming WTO negotiations to guarantee the possibility for the Union and its member states like during the Uruguay Round to maintain and develop their ability to determine and carry out their cultural and audio-visual policies and to preserve their cultural diversity."

In this way, the European Union has expressed its commitment to preserving the status quo for culture and audio-visual services in the upcoming round of liberalisation of different services sectors.

Canada has suggested to negotiate a global agreement setting out, in the longer term, clear ground rules to enable Canada and other countries to maintain policies that promote their culture, while respecting the rules governing the international trading system. The purpose is also to facilitate a global consensus that cultural diversity is central to social and economic development in an environment of increasing globalisation and that such consensus should be based on global vision, principles and objectives for the realisation of the social and economic benefits of cultural diversity for all citizens. In the North American Free Trade Agreement, the NAFTA countries, including Canada, already excluded cultural industries, defined as the production, distribution and sale of any print product, film, video recording, musical recording and all radio, television and cable services, from the scope of the liberalisation.

In order to recognise the specificity of cultural services and to provide for governments the necessary freedom to take policy measures in this field, several options have thus far been advanced:

- a. Preservation of the status quo ("moratorium");
- b. a special agreement relating to cultural industries as part of the GATS;
- c. design a specific treatment for cultural and audio-visual services, e.g. by using an exemption as part of the final WTO accord;
- d. a separate international instrument outside the GATS with a view to possibly referencing it into the WTO at a later point in time.

Given the generally modest state of political awareness in this area on a global scale, the second and third solutions do not appear to carry much political weight in the international arena. For the same reasons, even the fourth solution may be premature at this point in time.

However, awareness raising on the part of the Council of Europe should prove to be useful. By informing its member states and candidate countries, the Council of Europe might be able to clarify the wide ranging impacts that possible commitments in cultural and/or audio-visual sectors, taken either during accession or the upcoming GATS negotiations, might have on common European instruments and subsequently help prevent problematic situations from arising.

## **6. An International Charter on Cultural Diversity**

Quite apart from the concerns raised by the international trade law regime, highlighting the fundamental importance of cultural diversity for sustainable human development and the equal value of basic cultural policy principles with the trade policy principles appears timely and even as a matter of urgency. The project of an international charter on cultural diversity is a good example of such an initiative.

The globalisation of communication and services industries propelled by the internet and the prevalence of one dominant culture and language calls upon governments and citizens to clarify and reinforce the importance of cultural identity and cultural diversity. Unless governments commit to making these goals an integral part of their overall policies, the rapid technological and market developments risk leading to irreversible consequences in the cultural domain.

What is needed, therefore, is a pro-active approach on the part of the global community embracing the concept of cultural diversity as an important social, cultural and economic asset of mankind.

As a first step, setting out the principles involved, raising world-wide awareness, gathering international political support and putting cultural diversity on the international agenda on an equal footing with environmental and social issues is called for.

The Council of Europe could be vital in initiating and accompanying such initiatives by clarifying the issues, formulating principles and co-operating with other international organisations, such as UNESCO, in order to rally the political support necessary for safeguarding and promoting cultural diversity and identity. These policy goals are universal in their nature, and thus require a global answer.

## II. CULTURAL DIVERSITY AND INTERNATIONAL TRADE<sup>6</sup>

### Reasons for specific treatment of culture, cultural industries and audiovisual services

#### 1. The context

The forthcoming international trade negotiations within the framework of the World Trade Organisation (WTO) will have paramount importance for culture, cultural industries and audio-visual services. That holds true for all the sectors of negotiations, including trade in goods and trade-related aspects of intellectual property, even though the main focus is on the negotiations on trade in services.

The objective of the negotiations is, *inter alia*, to further deepen and broaden the liberalisation of services, and to promote economic activities and welfare globally. The new round is expected to enhance the development of industry and trade, as well as to promote employment and economic growth in general. The aim is to boost development, not only in the industrialised countries, but also in the developing countries.

The general interests of society will have to be taken into consideration in such negotiations. It is important to take the legitimate interests of all parties and sectors of society into account in order to guarantee a balanced and sustainable development globally.

The established and emerging trade regimes may also be useful for culture and cultural industries. The liberalisation of trade may greatly benefit these sectors which, from an economic perspective, have hugely gained in importance during the last ten years and still possess exceptional growth and employment potential. However, there are also areas and circumstances which constitute a real encounter between the principles of culture and trade policies. This calls for new solutions to guarantee that vital interests of society are not compromised.

The Council of the European Union (General Affairs) adopted on 26 October 1999 conclusions concerning the preparation of the Third WTO Ministerial Conference. The conclusions contain an important element on cultural policy and cultural diversity. "*During the forthcoming WTO negotiations the Union will ensure, as in the Uruguay Round, that the Community and its Member States 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*".

#### 2. The encounter between culture and trade policies

The liberalisation of trade is based on a few easily understandable principles, such as the principle of most-favoured-nation (MFN). In some instances, certain cultural and audiovisual policy measures or provisions may not conform with these principles.

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<sup>6</sup> This note was first submitted by the Finnish Delegation to the informal meeting of ministers responsible for culture and audiovisual of the European Union, 30-31. March 2000 in Lisbon.

The objectives of cultural and audiovisual policy, such as cultural diversity, are not as such in contradiction with the principles, grounds and measures of trade policy. It may be the means of cultural policy that do not conform with the possible obligations based on trade policy principles.

It is quite possible to state that these principles sometimes violate legitimate cultural policy considerations.

Examples of cultural policy measures that are relevant to the present analysis are generally positive measures (subsidies, grants, financing), commitments to certain treatment, e.g. national treatment (co-production agreements between governments) and arrangements that may be interpreted as quantitative restrictions of importation or preferential treatment (television quotas).

After the conclusion of the Uruguay Round, no significant new problems have surfaced in practice.

There is no general cultural exception in the GATS Agreement (General Agreement of Trade in Services). A number of European countries and the European Community made exemptions to the clause on MFN concerning audiovisual services, and most states bound to the WTO Agreements did not log any commitments on audiovisual services. This level of non-commitment has been sufficient for most European countries to retain their room for manoeuvre.

There may, however, be built-in problems in the constantly developing situation of trade in cultural and audiovisual services. Possible ways of supplying services are changing, especially as a result of the ever expanding use of information and communications networks. Convergence is changing the conditions of production and distribution of services. Patterns of consumption of and access to culture are evolving in a radical way. This evolution may lead to new kinds of conflict between policies.

The progress in information and communication technology and economic change, especially the rapidly evolving electronic commerce, raise a whole new set of questions. Among these is the classification of audio-visual content-based productions which are traded electronically.

It goes without saying that further international trade negotiations and increasing liberalisation, which may further extend the field of application of trade policy principles, the development of disciplines e.g. in the area of subsidies, possible new commitments, and the roll-back of MFN exemptions, may escalate the situation and lead to important and concrete contradiction between the two policy areas.

The objectives of cultural and audiovisual policy and the measures intended to realise them are so important that these contradictions will have to be resolved politically, and on a legally binding basis. An overall balance has to be found. In some cases that will undoubtedly imply that trade policy principles, obligations and commitments need to be specifically designed so as not to compromise the interests of culture. The specific design of the treatment of culture, cultural industries and audiovisual services must, of course, be justified on solid grounds.

It is crucial that all Member States of the Council of Europe, as well as the European Community and its Member States, have a common interpretation of the basic principles, a common analysis of the problems and a common view of the priorities to be put forward in the forthcoming negotiations.

### **3. The reasoning**

Below, there is a preliminary outline of some of the reasons giving rise to the specific treatment of culture, cultural industries and audiovisual services in the international trade negotiations.

#### *Specificity of culture*

The essence of the specificity of culture (in a broad sense, covering all relevant areas) was highlighted by Jacques Delors in his famous statement during the "Assises Audiovisuelles" in Paris already in 1989: "La culture, ce n'est pas une marchandise comme les autres".

What are the criteria that constitute the specificity of culture? Most, but not all such conditions or criteria reside in the notion of cultural diversity.

#### *Cultural diversity*

The notion of cultural diversity is widely inclusive as an overall cultural policy objective. E.g. the following aspects may be listed as qualities of cultural diversity (in no hierarchical or other specific order):

- linguistic diversity
- national and regional diversity
- diversity of forms of expression (and freedom of expression)
- broad access, participation
- abundant supply of expressions of culture
- national, regional, ethnic and other identities
- living and developing cultural heritage (in its many forms).

In cultural policy itself, there are many objectives that correspond to each aspect of cultural diversity, such as linguistic policy objectives, objectives to promote arts and artistic expression, objectives to safeguard and enhance cultural heritage etc.

On the other hand, among the cultural policy measures that are necessary to achieve these objectives, there is a whole panoply of positive measures and regulatory steps that may be used as instruments in this field. In the broadest sense these measures include, *inter alia*, maintaining of infrastructures and systems, like the institution of grants for the artists, the system of libraries and museums, and the system of training and education in the fields of arts, heritage and culture. The latter are the core of the human communications process transferring value-added knowledge from generation to generation.

The measures of cultural policy are not considered in this document.

The internationalisation of our societies (e.g. immigration) may, in itself, increase diversity. This development imposes a whole new series of conditions on society and requires rethinking of cultural policy. A truly pluralist society – reflecting genuine and rich diversity – is probably necessary for achieving higher levels of social cohesion, human rights and genuine democracy.

Diversity is also becoming a decisive factor for the competitiveness in the knowledge-based economy and society. Government policies should take full account of the fact that economic activity in the world has already started to move away from the production of goods as staple commodities, towards the production of goods and services in which non-material cultural and creative qualities, as well as cultural diversity, as part of general cultural capital, are becoming an increasingly critical raw material. The immaterial attributes of such production, extracted from the rich fabric of culture, constitute its main competitive asset.

That development should be encouraged. There are good reasons for rethinking both cultural and trade policies and for trying to reconcile them - adapting and accommodating these principles so that they maximally benefit societies. Trade policy is no different from other sectoral policies in that its principles do not, in most instances, *per se*, guarantee maximum benefit.

Strong cultures, cultural industries and audiovisual sectors have a direct, positive impact on competitiveness and employment, and on economic activities in general. In addition, culture has extensive social and societal effects. Culture is a very strong cohesive factor between nations, at the same time supporting sustainable development, conviviality and tolerance.

The fact remains, however, that the development, in Europe, of strong audiovisual sectors capable of important economic, cultural and social contributions calls for, at least for the time being, positive cultural policy measures. Even though such measures may sometimes contradict some trade policy principles, in the light of relevant market information it is very difficult to maintain that they would limit the free operation of the European audiovisual market in any significant manner.

Europe defines and characterises itself by its cultural diversity. There are several small language areas where the measures to enhance cultural and linguistic diversity are especially well-founded. Such instances are good examples of cases where positive cultural policy measures can be seen as correcting market deficiencies rather than distorting trade.

#### *Promotion of culture as promotion of public good*

When defining the grounds for the specific treatment of culture, one should, however, go beyond the notion of cultural diversity, to even higher values.

Basic cultural policy principles like the promotion of creativity, cultural identity and participation are integral parts of general public good. It is difficult, if not impossible, to conceive of a democratic society which would not somehow incorporate them as its basic policy goals. The promotion of these cultural principles by cultural and audiovisual policy measures should be seen as promotion of public good which is a prerequisite for good life for all and of a rich and stimulating cultural environment.

Over and above its role as public good, culture is part and parcel of the general human condition.

*Equalising of values governing policies of trade and culture*

Cultural and audiovisual policies aim at promoting public good and values that are as crucial and as profoundly justified as are the values promoted by trade policy (fair and open competition, competitiveness, economic welfare), and, ultimately, the two policies share the same goal of facilitating the attainment of good life for all.

This understanding provides the governments with an even platform for devising, designing and co-ordinating a balanced and coherent policy that takes account of all legitimate cultural and economic interests of the society.

## **CONCLUSION**

The specificity of culture (in a broad sense) must be taken into account in negotiations on any trade or investment agreements relating to services, intellectual property, investment and subsidies or any other negotiating objects that may have an impact on the attainment of cultural policy objectives.

The operational result should be the maintaining of options for policy-making and room for manoeuvre for the governments in both public policies and measures at national and regional inter-governmental levels. The margin for manoeuvre is necessary for the policies and instruments to respond to the evolution of the culture and audiovisual sectors. It secures room for both preserving and developing, *inter alia*, positive measures, financing arrangements, and the necessary regulation.

All governments should in principle have equal latitude for policy options or freedoms. Cultural policy measures mostly operate on national level, having only limited effect on the economic relations with third parties. In some cases the measures touch economically and commercially relevant areas.

As concerns the European Community and its Member States, it is worthwhile to recall that the Treaty establishing the European Community contains a provision (Art 151.4) according to which the "Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures." This also concerns international trade negotiations.

The specific treatment of culture is not an end in itself. If cultural policy objectives can be achieved without specific measures in the future, there would be no need for specific treatment of culture for these purposes. General international economic integration ("globalisation") and interdependence may in the long run lead to a direction where the encounter between culture and trade policies is more relaxed. Such future, however, is still fairly distant.

Trade policy is, by definition, international. Cultural policy is, by definition, national. Traditional national cultural policy must now be complemented by international cultural policy thinking.

**APPENDIX****Canada:**

Canada is seeking to enhance international dialogue on cultural diversity including pursuing the creation of a New International Instrument on Cultural Diversity (NIICD).

Canada hopes, as a first step, to facilitate a global consensus that cultural diversity is central to social and economic development in an environment of increasing globalisation. This consensus should be based on global vision, principles and objectives for the realisation of the social and economic benefits of cultural diversity for all citizens. A New International Instrument on Cultural Diversity can be the articulation of this global consensus. In the longer term, the instrument would set out clear ground rules to enable Canada and other countries to maintain policies that promote their culture, while respecting the rules governing the international trading system and ensuring markets for cultural exports.

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Other contributions that arrive late will be distributed at the meeting (CDCC-BU (2000) 9 Addendum).