

Selected Bibliography on International Law and the Protection of Cultural Diversity

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1. *Recommended Reading*

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

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

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

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

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

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

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

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

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

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