

## **LAS INDUSTRIAS CULTURALES EN LA GLOBALIZACIÓN**

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### **THREE FREQUENTLY ASKED QUESTIONS ABOUT CULTURAL DIVERSITY**

**Ivan Bernier**

In the few minutes at my disposal, I have chosen to address three questions that are frequently asked in the context of discussions concerning the negotiation of a new international convention on cultural diversity.

#### **Question 1 : What is meant by “cultural diversity” ?**

To clarify this concept, we must first explore the notion of culture. The most widely accepted definition of culture is undoubtedly that adopted by the UNESCO in 1982, which affirms that, in its broadest sense, culture can be regarded as “the set of distinctive spiritual, material, intellectual, and emotional features of society or a social group. In addition to art and literature, it encompasses lifestyles, basic human rights, value systems, traditions, and beliefs.” This set of distinctive features that characterize a society or social group refers to what we commonly call cultural identity. Literally, cultural diversity therefore would simply mean the multiplicity of cultural identities in existence, each having their own particular characteristics. But the concept of cultural diversity, like that of biodiversity, goes somewhat further in that it views the multiplicity of cultures from a systemic perspective, in which each culture develops and evolves in contact with other cultures. Accordingly, the preservation of cultural diversity implies thus both maintaining and developing existing cultures and ensuring openness to other cultures.

However, if we attempt to transpose this relatively clear and simple concept into the framework of an international convention designed to protect and promote cultural diversity, the question immediately arises : what is it exactly that must be preserved and promoted ? The definition of culture provided by UNESCO in 1982 is not particularly helpful in that respect. Careful analysis of that definition shows that it refers broadly speaking to two distinct realities. First, there is a conception centred on art and literature, which refers to the cultural expression of a community or group and encompasses cultural creation in all its forms, whether by individuals or cultural enterprises. Secondly, there are lifestyles, value systems, traditions, and beliefs, which refer to a

more sociological and anthropological perspective on culture. The issue is to determine whether the proposed convention is intended to protect cultures understood in a sociological and anthropological sense or to protect cultures understood in the sense of a community's cultural expression (production of cultural goods and services).

To the extent that both are threatened, one could answer that both must be protected. But this is only part of the answer. The truth of the matter is that these two concepts of culture can hardly be separated ; they stand so to speak in a causal relationship. Even though globalization and trade liberalization are bringing about substantial changes in national cultures understood in an anthropological and sociological sense, this does not necessarily mean that any political initiatives that may affect the content of the cultures in question must be rejected. Claiming the contrary would impart a rigid meaning to the concept of cultural identity, which would only serve those wishing to use them as instruments of political control. In reality, in order to survive, all national cultures, must adapt over time to a variety of internal and external changes. This is where cultural expression comes into play. It is a key element in the adaptation of cultures to the transformations imposed on them by globalization and trade liberalization. Cultural creators and workers play a primordial role in that respect by establishing a critical forum for confrontation between domestic and foreign values and between past values and behaviors and future perspectives. Cultural expression, in other words, is an essential part of the democratic process. In this sense, one could argue that the preservation of cultural diversity depends in a very fundamental way on the preservation of diverse cultural expression. By inference, one could also asserts that a convention which aims to preserve and promote cultural diversity needs to promote in the first place cultural expression.

### **Question 2 : Is cultural diversity threatened ?**

Three processes converge to make it increasingly difficult to preserve cultural diversity. The processes in question are globalization, trade liberalization and the development of information and communication technologies under the impulse of digitalization. Although essentially driven by economic considerations, these processes are also cultural in the effects that they have. By engendering an economic superstructure that is based essentially on competition and tends to impose a single commercial mould on the expectations that citizens have in various realms of

activity, they fosters new forms of social organization that call into question traditional ways of doing things and existing loyalties. But if these changes are imposed rather than accepted, they can easily provoke resistance.

The failure of the third WTO Ministerial Conference in Seattle, in 1999, marked from that point of view a turning point in awareness of the impact that globalization and trade liberalization have on cultures understood in a sociological and anthropological sense. Although the conference failed for reasons beyond the protests surrounding this meeting, the scope of the protests, nonetheless clearly revealed genuine public concerns over the effects of globalization and trade liberalization. Despite the disparate agendas of the many interest groups involved in the protests, a common theme did emerge—the questioning of a globalization exclusively focused on commercial considerations and apparently beyond any form of true democratic control. Even though the demands regarding the treatment of cultural products did not make many headlines during the events in Seattle, unlike the situation in the final months of the Uruguay Round in 1993 and during the MAI negotiations in 1998, a number of observers have stressed since then that it is the scope and pace of the changes imposed on society by globalization as well as the subsequent sense of lost cultural references that has fed a significant part of the anti-globalization movement.

Thus, in a speech before the Trilateral Commission in Tokyo in May 2001, Fred Bergsten, former Assistant Secretary for International Affairs of the US Treasury, referring to the protests in Seattle, Davos, Bangkok, and Washington, which he considered a superficial manifestation of a very real problem, went so far as to declare that “the world economy today faces a more fundamental set of challenges because the backlash against globalization is much more than economics. [...] [T]here is also a huge cultural dimension which raises a mass of contentious and difficult issues of their own.” A few months later in a commentary published in the Los Angeles Times in the lead-up to the July 2001 G-8 summit in Genoa, Jeremy Rifkin wrote that “protests are becoming a familiar part of world political and economic forums. But, although the attention often goes to the relatively few violent protesters, there is a bigger message worth listening to. The fact is we are witnessing the first stirrings of a cultural backlash against globalization whose effects are likely to be significant and far-reaching.” There is only one step separating these conclusions from that of Faouzia Zouari, who suggests that “the precedence that economic

imperatives take over social and political values, backed by the prodigious expansion of the information highway, is challenging national identities, sometimes driving them into retreat and even into aggressively asserting counter-models.”

But it is not only culture understood in a broad sociological and anthropological sense that is threatened by globalization, trade liberalization and the accelerated development of information and communication technologies. Much more serious in a sense, because it affects the very capacity of a cultural community to observe and criticize itself and to adjust to changes taking place internally and externally, is the threat regarding cultural expression. It takes concretely three forms. The first is related to the influx in many countries of foreign cultural products (films, records or CDs, books etc.) which replace domestic cultural production, thereby depriving the affected communities of the symbolic discourse essential for their own development. The second has to do with the concentration of production and the marketing of cultural products by large industrial groups, and the consequent standardization of cultural expression under the influence of basically commercial imperatives. The third concerns the international cultural space as it is currently being constructed with the new information technologies (the Internet, etc.). Despite all the opportunities that these new technologies provide to express the diversity of cultures, there is a very real danger of a deep digital divide between countries that have real access to these technologies and those that do not.

Unfortunately, the pressure that the trade liberalization process exerts on the cultural sector, far from receding, appears on the contrary to be increasing with the multiplication of competitive free trade negotiations at the bilateral, regional and multilateral levels. As the following examples will show, the danger for the preservation of diverse cultural expression, and as a consequence for the preservation of cultural diversity, is very real.

New Zealand had committed in 1993, in the Uruguay Round of trade negotiations, not to have recourse to quantitative restrictions in the audiovisual sector. But a subsequent study having shown that the proportion of local content relative to total schedule time on television had diminished to such an extent since 1995 that, when compared with ten other countries, New Zealand stood at the bottom end of the spectrum with a percentage of 24% of local content, the

New Zealand Government announced in 2001 that it would introduce local content quotas for radio and broadcast television. This prompted an immediate reply from the Office of the United States Trade Representative : in its *National Trade Estimate Report on Foreign Trade Barriers 2001*, it pointed out that such an action would violate New Zealand's commitments under the GATS. In the end, the New Zealand government simply dropped its idea of introducing television quotas.

Another interesting case is that of South Korea which, during the Uruguay Round of negotiations on services, abstained from claiming exemption from the most-favored-nation (MFN) treatment to cover co-production agreements or regional film funding agreements for the good reason that it had no such measures in place at the time. When the opportunity arose later on to negotiate such agreements, it found that it was not entitled to do so, a situation that was found all the more frustrating as the European Union and a large number of States had claimed an MFN exemption for existing as well as future agreements of that type.

In the present round of negotiations on services, demands to obtain a wider access to the audiovisual services market have been made among others by Japan and Brazil. But surprisingly, the United States, in their 2002 *Proposals for Liberalizing Trade in Services*, were content "to request countries to schedule commitments that reflect current levels of market access in areas such as motion picture and home video entertainment production and distribution services, radio and television production services, and sound recording services". This last request from the United States may appear surprisingly accommodating considering their past tendency to counter any attempt to restrict trade in cultural products ; but in reality, it is less attractive than may appear at first sight. It must be understood first of all that behind this demand, there is the obvious intention to convince as many States as possible to accept to commit themselves in the audiovisual services sector, something which very few had accepted to do at the end of the Uruguay Round of negotiations. Secondly, it must be pointed out that this type of legal commitment can put many States, particularly developing States, at a disadvantage when the time comes to introduce new measures such as radio and television quotas already used by others to promote the development of their cultural expression ; if they have no such measures at the date of entry into force of the new agreement, they would be prevented from adopting them in the

future, a situation not very far from that experienced by South Korea with regard to film co-production and regional funding agreements.

But to understand the type of pressure that is presently exerted to obtain free access to cultural services, it is not enough to look at what is happening at the WTO multilateral level. There is a great deal to learn from the recent free trade agreements concluded by the United States with Chile and Singapore. The impact of those agreements in the cultural sector is far from negligible. They involve not only a change of approach in negotiating concessions in the service sector (from a “bottom up” approach (that is where the obligations are linked to the specific commitments of each Party) to a “top down” approach (that is where the agreement is compulsory for both Parties and all services, subject to reservations or exceptions, which is more constraining), but also a change of priority in the type of concessions researched. The new strategy of the United States in the cultural sector rests quite clearly on the view that while measures that do not conform to national treatment, most-favored-nation treatment and free market access can be tolerated as they presently exist in the traditional audiovisual sector because they are bound one way or another to disappear with time, no such tolerance must be accepted for digitally delivered content which are at the hearth of the new communication economy and should therefore remain free of cultural protectionism. In other words, this is where the action will take place in the future. To implement this strategy, the United States are now proposing an approach that clearly put the emphasis on the free circulation of digitally delivered content and circumvent the dichotomy between cultural goods and services by making digital products subject to the same basic obligations that apply to the electronic supply of services, that is national treatment, most-favored-nation treatment and free market access. To facilitate the acceptance of such commitments, contracting Parties are entitled to make exceptions and reservations to cover their non-conforming cultural measures in the services and investments sectors and a carved out is made for subsidies in those two chapters. But this is more than fully compensated by the gains expected in the new digital environment.

#### **Question 4 : What can be done to preserve cultural diversity ?**

Unfortunately, up until now the search for a solution to the trade and culture debate has centred for the most part around various forms of cultural exceptions designed to accommodate particular cultural concerns in trade agreements. This approach, to the extent that it gives priority to trade

over culture, cannot be considered as a satisfactory solution. 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. A satisfactory solution requires recognition of the fact that the multilateral trade regime cannot on its own provide answers to non-trade concerns. There is a growing literature nowadays that criticizes the tendency of the multilateral trade regime to get involved in non-trade matters and various ways of approaching that problem have been proposed, using concepts such as those of “subsidiarity” and “coherence”, that suggest in general greater deference to outside expertise, whether national or international.

If the solution to the cultural diversity issue cannot come from the trading system alone, then obviously a contribution coming from outside that system is essential. The declarations on cultural diversity that have been adopted in the last few years may be considered as a first step in the right direction but they are not sufficient. What is needed is 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. As some authors put it, “instead of looking primarily within the WTO for the relevant structural principles”, consideration could then be given to the “importance of non-WTO institutions and norms in treaty interpretation that represent values other than free or freer trade.” But until the principles and norms in question are clearly expressed in a multilateral cultural agreement, the risk remains that cultural considerations will continue to be addressed within the WTO from a strictly trade perspective and on a piecemeal basis, which will amplify the existing problems rather than help to solve them. That is why it is crucially important that the recommendation of the Executive Board of UNESCO that the General Assembly takes the decision to continue action aimed at drawing up a new international standard-setting instrument on cultural diversity be adopted next October.