CULTURAL DIVERSITY AND REGIONAL TRADE AGREEMENTS: THE CASE OF AUDIOVISUAL SERVICES

Silvia Formentini
(Research associate, University of L’Aquila, Italy; e-mail: silvia.formentini@mclink.net)

Lelio Iapadre
(Associate professor of international economics, University of L’Aquila, and Professorial lecturer in international economics, Johns Hopkins University, Bologna Center, Italy; e-mail: iapadre@cc.univaq.it)

Dipartimento di Sistemi e Istituzioni per l’Economia
Facoltà di Economia
Università dell’Aquila
P.le del Santuario, 19
67040 ROIO POGGIO (AQ) Italy
tel.: +39-0862-434866; fax: +39-0862-434803

Very preliminary version

ABSTRACT

The difficult relationship between the two global public goods of cultural plurality and international economic integration is often analysed at global level, stressing jurisdictional overlap between the WTO system and other multilateral regimes. The tension is particularly strong in the audiovisual sector, where technological and economic forces leading towards a higher degree of international integration seem to conflict with the need to preserve and develop a plurality of cultural identities. Similar problems arise at regional level. Building on the political economy of international trade negotiations, this paper compares the General Agreement on Trade in Services (GATS) with preferential integration agreements in the services sector, in order to understand how the double-edged interplay between governments and domestic interest groups affects the trade-off between cultural plurality and international integration. All the main preferential agreements are surveyed, including the EU, NAFTA, SAFTA and the Korea-US agreement which is currently under negotiation.

Keywords: cultural policies, regional integration, audiovisual services.
JEL Classification: F02, F13, L82.
1. Introduction

International economic integration has often collided with the protection and promotion of non-economic objectives, such as environmental and labour standards. These ‘trade and …’ dilemmas call for new developments in the international trading regime, aimed at providing for a more effective governance. The trade-off between international economic integration and cultural diversity is a major example of this tension, due to the dual nature of cultural products. The opening of domestic markets to international flows of products related to cultural identities, such as films and music, is often perceived as a threat for specific local cultures. On the other hand, domestic policies and regulations that a number of States have implemented in order to preserve and develop the plurality of cultural expressions are under scrutiny for their explicit or unintentionally restrictive effects on international economic transactions.

The status of cultural products has proved to be a most contentious issue in the World Trade Organization (WTO), where many countries refused to open their markets, on the basis that protecting domestic cultural industries was needed in order to preserve national identity. At the same time, initiatives for establishing a specific international regime for cultural diversity outside the multilateral trading system have multiplied, originating new concerns as to the possible coordination of instruments that pursue goals perceived as clashing with each other. The most recent case being the adoption of the ‘Convention on the protection of the diversity of cultural contents and artistic expression’ at the United Nations Educational, Scientific and Cultural Organization (UNESCO), which has triggered a large debate on the need to clarify its relationship with WTO rules to avoid misuse of its provisions with regard to trade policy priorities.

Recent developments in the conceptualization of ‘global public goods’ support the vision that international governance is needed for cultural diversity. Building on the public goods notion, Kaul, Grunberg and Stern (1999) have developed a theory of “global public goods”, which can be applied to the concept of cultural diversity. In fact, cultural plurality, defined as the existence of a number of diverse cultural identities, can be seen as a pure global public good, as its benefits are non-excludable, non-rival and cut across countries, population groups and generations. This definition can be applied both at the national level, within each country, where it calls for the protection of cultural minorities, and in the world system. It is based on a vision of cultural dialogue as part of the social capital building the identity of a community (Baker, 2000). Cultural plurality is a supply-side concept, not to be confused with the simple differentiation of cultural preferences, which in principle could be satisfied by a range of differentiated cultural products made by a unique producer. Moreover, cultural plurality should not be confused with competition in the cultural industry, which, although important, does not necessarily ensure a plurality of cultural identities.

The supply of global public goods starts at the national level, but single States’ policies on their own cannot adequately provide for this kind of goods, and international cooperation is required. Notably, according to Kaul, Grunberg and Stern (1999), an increase in international cooperation is needed to close the three ‘gaps’ – jurisdictional, participation, incentive – that undermine the provision of global public goods. As these gaps are present also in the case of cultural plurality, co-ordination of policies at the international level is required.

But the global arena is not the only level at which global public goods such as cultural diversity and economic integration are supplied. The regional dimension is getting growing relevance in the governance of international relations. Countries that face similar concerns create groups and organizations to cope with. A broad range of regional associations, operating in specific fields, is including the protection and promotion of cultural diversity among its goals1. Preferential arrangements between groups of countries are perceived as useful instruments to foster economic integration and benefit from its gains. The number of regional trade agreements (RTAs) has dramatically increased over the last decade, and their coverage is extending to a broad range of issues, including cultural matters.

---

1 For instance, the contracting Parties to the Ramsar Convention are dealing with cultural diversity in relation to the protection of wetland sites.
This paper investigates how the trade and culture dilemma is set in the main RTAs, focusing on provisions for the audiovisual sector, for two reasons. First, audiovisual products have proved to be one of the most controversial issues in the debate. Second, this sector is undergoing rapid and substantial technological changes, leading to increased concentration and vertical integration, as well as to inter-sectoral integration. In this sense, pressures towards deeper international economic integration are not only external, but intrinsic as well, further accruing the tension originated by the dual nature of cultural products.

The political economy of trade negotiations, presented in Section 2, is used as a helpful tool to understand and assess different regimes on audiovisual products establishes by main RTAs. Section 3, using the General Agreement on Trade in Services (GATS) as a benchmark, describes and evaluates a number of RTAs which present interesting features on the subject. Section 4 resumes and concludes, proposing some remarks on possible future developments.

2. The mechanics of trade negotiations: an overview

Achieving greater economic integration through multilateral trade negotiations generally relies on intersectoral trade-offs and mobilization of groups to support reforms. In a simplified mercantilist view, negotiators compare benefits deriving from access to key foreign markets with costs due to opening of domestic sectors. Vested interest groups play a vital role in this process: in each country, import-competing producers will lobby against trade liberalization, often prevailing on the weakly organized interests of consumers. On the other hand, producers that would benefit from better access to export markets will lobby their own government for removing import restrictions in other sectors, so helping to create international coalitions sustaining broad liberalization. As stated by Hoekman and Kostecki (2001, p. 120), “essentially, all trade negotiations are multi-level, involving both domestic bargaining among interest groups, and negotiations between governments that represent these national interests” – that is, the so-called ‘two-level’ game (Putnam, 1988).

In this sense, reciprocity is a crucial principle in multilateral trade negotiations, as it ensures negotiators that their country will obtain some ‘payment’ for the concessions granted in opening domestic markets, and that no free riding behaviour will occur.

However, these basic mechanics, which have allowed WTO Members to reach a considerable extent of liberalization with regard to trade in goods, have shown to be not completely fit for trade in services. Major problems arise with regard to reciprocity. Messerlin and Coeç (2004) point out three core reasons that restrain the extent to which reciprocity can be applied to services: assessing the concessions offered by other countries in other service sectors is not an easy task; the real extent of liberalization achieved depends heavily on domestic regulatory reforms, and not only on the removal of trade barriers; there are no clear-cut and agreed definitions to ascertain the nationality of a service. Given these particular features, it has been argued that negotiations on trade in services follow a unilateral approach to liberalization (Jacquet et al., 1999), where countries open their service sectors in order to achieve a better performance of their domestic economies, and do not rely on international interactions.

Three more points need to be taken into account. First, services are less traded internationally than goods, because of their intrinsic economic nature, often requiring personal contact between consumers and producers, as well as because of high political barriers, so that “the number and political weight of import-competing sectors may greatly exceed that of export-oriented service sectors interested in obtaining access to foreign markets” (Hoekman and Kostecki, 2001, p. 246). Second, on the other hand, even domestic firms that are not interested in exporting services may support liberalization, not on a quid pro quo basis, but because they perceive services as strategic inputs for their activities. As a consequence, negotiators do not focus on ‘narrow reciprocity’ as in goods liberalization (Hoekman and Messerlin, 2000). Finally, as domestic regulation plays an important role in trade in services, “regulatory agencies enter into the picture as players more prominently than in the case of trade in goods” (Hoekman and Braga, 1997, p. 22).
The same mechanics underlie regional trade negotiations, but some specific aspects constituting the main rationale to go regional are worth recalling. First, as regional agreements involve a limited number of countries, it could be easier to negotiate and reach consensus in a quicker time than in the multilateral system. Moreover, countries that decide to start negotiating a regional trade agreement are usually like-minded, or at least have strong incentives in achieving a concrete result. Incentives may have both economic and non-economic nature, and political and strategic objectives have often revealed to be a powerful triggering force to reach successful trade liberalization on a regional basis, more than compensating concerns and pressures of groups adverse to it (OECD, 2003). Non-economic goals can be pursued in the multilateral trading system as well, but they are much more difficult to agree. Thirdly, as WTO negotiation rounds are getting longer, the business community may perceive regional integration as leading to quicker results, and exert more intense lobbying on national governments. Lobbying will be even stronger if firms think the regional agreement could translate into increased negotiating power when dealing at the multilateral table, thus enhancing “the probability of obtaining greater access to third markets” (Hoekman and Kostecki, 2001, p. 350).

With specific regard to trade in services, Hoekman and Braga (1997, p. 22) point out that in regional agreements it may be easier to reach liberalization, and to a broader extent, because “in regional talks, governments may be more like-minded with respect to the general objectives underlying at least a subset of the regulatory regimes applying to service industries, especially if - as is often the case - the countries involved have similar cultures and per capita incomes and are in geographic proximity”. Notably, the authors stress that mutual recognition of standards and qualifications, trade-offs across issues, and issue linkages or side-payments may be more feasible, thus facilitating opening up national services markets. Furthermore, they observe that regional liberalization leads to more predictable results. Due to the smaller number of countries participating to negotiations, and to greater similarity in their domestic regulations, it is easier to evaluate the outcomes of liberalization and to internalize benefits. Free riding concerns are less relevant, and governments and interest groups are more willing to liberalize.

Notwithstanding these differences in the interplay between governments and interest groups, it has been argued that, at general level, provisions found in RTAs on trade in services are quite similar to those in the WTO rules (Sauvé, 2002). Notably, disciplines provided in order to achieve the progressive liberalization of services markets are almost the same, and, with a few exceptions, RTAs have not substantially tackled the rule-making interface between domestic regulation and trade in services, nor the lack of regulatory cooperation, nor the key ‘unfinished’ rule-making items on the GATS agenda (except concerning procurement). The OECD underlines that “RTAs have generally made little progress in opening up those services sectors that have to date proven particularly difficult to address at the multilateral level (e.g. air and maritime transport; audio-visual services; energy services)” (Sauvé, 2002, p. 6). On the other hand, multilateral negotiations have resulted in a broader degree of liberalization in some key areas (basic telecommunications, financial services) so that it can be argued that “the political economy of multilateral bargaining […] may help overcome the resistance to liberalization arising in the narrower or asymmetrical confines of regional compacts” (ibid).

However, recently, the slow pace of negotiations and the lack of concrete results at the multilateral level have given rise to a ‘new generation’ of RTAs that tend to contain “GATS-plus” service provisions, in terms of both the extent of liberalization and the coverage of supply modes. An increasing number of RTAs adopt a negative list approach to market opening, which “as a practical matter […] can be more effective and ambitious in producing liberalization” (Sauvé, 2002, p. 5) than the positive list approach found in the GATS. Notably, this seems to be the case for recent US RTAs, that include GATS-plus obligations in areas of specific interest (such as telecommunications, e-commerce, financial and audiovisual services), while replicating existing obligations under the GATS or adopting GATS-minus provisions on other issues (e.g., limited
definitions of consumption abroad and presence of natural persons as modes of supply for services) (Abugattas Majluf, 2004).

We will now turn to review the main RTAs and bilateral agreements of special relevance to the trade and culture dilemma, in order to assess, through a comparative analysis with the WTO regime, the dynamics and the outcomes of liberalization in trade in audiovisual services at regional level.

3. Regional economic integration: what role for cultural plurality?

3.1 Background: the WTO rules on audiovisuals

Before moving to examine regional regimes for audiovisuals, it is useful to briefly survey how the sector is regulated in the multilateral trading system.

In the WTO regime, rules on audiovisuals can be founded in a number of agreements, mostly because the definition is not clear-cut and the dividing line between services and goods remains somewhat uncertain. The main agreement regulating trade in audiovisuals is the GATS, which aims at liberalizing trade in services, including the audiovisual sector. Relevant provisions are also embodied in the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), which establishes minimum levels of protection that each government has to give to contents and authors. As trade in audiovisual services cannot be completely disentangled from trade in goods, the General Agreement on Tariffs and Trade (GATT) is to be taken into account as well in assessing the WTO regime for audiovisuals. Moreover, a series of other WTO Agreements have a potential bearing on the sector, such as the Agreement on Subsidies and Countervailing Duties, the Agreement on Implementation of Article VI of GATT 1994 (the antidumping agreement), the Agreement on Safeguards, the Agreement on Trade-Related Investment Measures (the TRIMs Agreement), and the Ministerial Declaration on Trade in Information Technology Products (also known as the Information Technology Agreement or ITA) (Beviglia-Zampetti, 2005).

Nonetheless, the GATS stands as the more important multilateral discipline on trade in audiovisuals, and this paper will use it as a benchmark in order to assess how trade agreements deal with cultural diversity at regional level.

The main features of the GATS are as follows. Services may be exchanged through four modes of supply: cross-border supply (mode 1), consumption abroad (mode 2), commercial presence (that is, foreign direct investment - mode 3), presence of natural persons (mode 4). The GATS sets both general obligations and specific commitments. The most-favoured-nation (MFN) treatment and transparency are general obligations, which apply automatically to all Member States. However, due to strong concerns on differences between national regulations, Members were allowed to list temporary MFN exceptions in specific sectors.

Market access and national treatment are specific commitments. Members negotiate in which sectors and modes undertake commitments, and to which scope. The commitments appear in schedules that list the sectors being opened, the extent of market access being given in those sectors, and any limitations on national treatment. It is the so-called “positive list” approach, preferred to the “negative list” approach because of the difficulty of determining all the measures that applied to each service sector in order to decide which to exempt (Hoekman and Kostecki, 2001).

Each Member is required to have a schedule of specific commitments, but there is no obligation on the extent or coverage of commitments. Thus, Members are free to tailor their schedule in accordance with domestic features of service sectors and with national policy objectives.

There is no doubt that the GATS allows Members for a high degree of flexibility, but it is questionable whether this has really helped to attain greater liberalization. In fact, most Members opted for a minimal initial schedule of commitments, and the first round of negotiations (the “GATS 2000”) did not achieve to complete the GATS. New negotiations on services are part of the Doha Development Agenda, and are currently underway. Nonetheless, negotiations have shown a slow pace, and their outcome is still quite uncertain.
Audiovisual services have proved to be one of the main contentious areas in the process of progressive liberalization. During GATS negotiations the conflict between audio-visual policies and international economic integration, which date back to the twenties (Footer and Graber, 2000), erupted with particular intensity. Canada and the European Union (EU), although in different forms, tried to carve out an exemption of cultural policies from WTO rules, based on their linkages with national identity and cultural plurality. The US claimed that a cultural exemption would have allowed for implementing broad protectionist measures, and advocated deep liberalization of market access in the audiovisual sector.

The GATS incorporates a compromise solution. Audiovisual services were not excluded from the general obligations envisaged in the GATS, but the EU and several other countries took exemptions from the MFN principle in this sector. Furthermore, Members did generally abstain from undertaking specific commitments in audiovisual services. Only nineteen countries included this sector in their GATS schedule (WTO, 1998). Among the large audiovisual producers, only the US has taken substantial commitments at the various stages of audiovisual production, distribution, and transmission, while other countries limited the opening up of their audiovisual sector to very specific issues.

In the preparatory phase of the current round of GATS negotiations, only US, Switzerland and Brazil have made new proposals in the area of audiovisual services, without any concrete effect. So far, the audiovisual sector has been included in the lists of bilateral requests and offers of 26 WTO Members, and only 7 covered new or improved commitments on audiovisual services (EC, 2005). In order to give new impulse to current negotiations on trade in services, the Hong Kong Ministerial Declaration has called for groups of Members to present plurilateral requests focused on a specific sector or mode of supply to other Members, in addition to bilateral request-and-offer negotiations. Concerning audiovisuals, the US, Hong Kong, China, Japan, Mexico, Singapore, and Taiwan have presented such a plurilateral request. They recall that “there shall be no a priori exclusion of any service sector or mode of supply” and ask for undertaking new and improved commitments, extending both the sector coverage and the level of commitment, and reducing the scope and number of MFN exemptions. No information has been disclosed regarding other Members’ reactions to this plurilateral request.

3.2 The European Union: a double standard

The European integration agreements have been one of the first RTAs to deal with liberalization of trade in services, and notably in audiovisual services. As European integration goes well beyond a free trade agreement (FTA), the EU regime does establish provisions not only on trade in audiovisuals, but on common policies as well. The first attempts to shape a Community audiovisual policy arose in the first half of the Eighties. Technological developments, e.g. in satellite broadcasting, weakened the performance of European audiovisual industry, resulting in a rapid increase of the deficit with the United States in audiovisual trade, that prompted initiatives on the part of the Community institutions to reinforce national policies.

Article 151 of the Treaty establishing the European Community (1992) assigns to European institutions a shared competence in the cultural field, implemented by the Treaty on European Union (1993). A specific reference to the audiovisual sector is made: “Action by the Community shall be aimed at encouraging co-operation between Member States and, if necessary, supporting and supplementing their action” in several areas, among which “artistic and literary creation, including in the audio-visual sector”. This article also gives a wider relevance to the target of protecting cultural plurality, by stating that “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”.

6
Nowadays, European audiovisual policies encompass a system of rules concerning the transmission and the contents of audiovisual services, as well as a wide range of support tools, which complement national policies (subsidies, quotas, taxes, regulations). Besides, other policies cope with the specificity of the cultural sector as well, explicitly intertwining the objective to promote cultural diversity with economic and industrial policy targets.

Since its establishment, European audiovisual policy shows to be aimed at promoting both economic integration and cultural diversity. As stated by Galperin, “the initial idea [...] was that balancing economic integration and cultural diversity was not problematic because liberalization of audiovisual services within the EU would bring the ‘common European heritage’ to the fore, and thus create a single European audiovisual space. This unified market would in turn provide the economies of scale needed by audiovisual producers to compete with the US-based media conglomerates, both within and abroad” (1999, p. 635).

More recently, the European Commission has stated that “barriers to the circulation of European audiovisual works and barriers to the provision between Member States of filmmaking services … hinder the promotion of cultural diversity and prevent the sector from taking full advantage of the benefits of the Internal Market” (CEC, 2001, p. 3). As a matter of fact, due to the plurality of languages, the diversity of cultural consumption patterns, and the fragmentation of distribution networks, the creation of a single European market is perceived as strengthening the development of both a competitive cultural industry and a strong cultural identity.

At external level, this policy is reflected in a negative stance on undertaking international liberalization commitments for audiovisual services, consistently with the ‘Fortress Europe’ formula: open frontiers within, protectionism from outside (Galperin, 1999). As said, in the GATS the EU took broad MFN exemptions with indefinite intended duration on audiovisuals, and made no specific commitments in this sector, in order to protect and promote both European common cultural identity and European audiovisual industry. This position has not changed during GATS 2000 negotiations, nor in the current round. The negotiating mandate explicitly states that the EU will ensure “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”.

The multilateral trading system is not the only area in which the external aspects of the European audiovisual policy are developed. Alignment with the GATS Community aquis and participation in EU programmes on audiovisual are explicitly mentioned in accession and pre-accession treaties with candidate countries, while most of EU trade and association agreements provide for cooperation in the audiovisual field, considered an integral part of the EC audiovisual action. But RTAs concluded by the EU do not establish any GATS-plus provision for liberalization in audiovisual services. For instance, the Euro-Mediterranean Partnership establishes a specific programme for cooperation in the audiovisual sector, but no obligations have yet been provided for opening domestic markets in the free trade area framework, and audiovisuals are often subject of broad exemptions in EU-Mediterranean Partners Association Agreements. As stressed by Ghoneim (2004), attention should be focused on the potential implicit protectionist aims of EU policy.

Wunsch-Vincent (2003), examining the EU-Chile Association Agreement, remarks that “while making pledges to reinforce cultural cooperation, cultural services are excluded from the chapter on trade matters” (p. 33) – a statement that can be referred to the whole of RTAs concluded by the EU.

Summarizing, within the EU the trade-off between economic integration and cultural diversity seems to fade away, as the former is seen as a tool for promoting the latter, by enlarging market access for national audiovisual products. As a consequence, the EU sets a double-standard policy, where the approach driving internal integration is sharply different from the policy stance in international institutions. Implementation has proven to be quite complex, and the EU audiovisual policy “is the arena for divergent interests and arguments, both economic and cultural, European and national” (de Smale, 2004, p. 163). Conflicts arise from two main tensions. On one hand, at the
internal level, audiovisuals are a major example of the imperfect stage of EU integration in services market (Langhammer, 2005), and the Commission strives to remove trade barriers, arousing the opposition of countries and interest groups that see EU integration as a threat to their cultural identity. On the other hand, at the international level, the search for European identity leads the EU to protect the audiovisual sector, at the cost of disputes with other countries interested in trade liberalization.

From a political economy viewpoint, the role played by national governments and interest groups in determining the concrete course of European audiovisual policy stands to be crucial. Almost all European countries (including “free trade–minded” countries, such as Britain) have implemented measures to protect domestic audiovisual industry (Messerlin and Coe, 2004), under the pressure of both business and professional national lobbies. EU audiovisual industry is highly concentrated (Doyle, 2004), and quite small if compared to the whole economy. In this sense, it is a perfect example of collective action in the Olsonian perspective (Olson, 1965), where small and well-organized interest groups achieve to obtain gainful protection, whose costs are spread over other sectors (Messerlin, 2000).

European integration has not managed to overcome the high fragmentation of audiovisual markets. Domestic industries’ pressure to safeguard their quasi-monopolistic power in national markets converged with European governments’ leaning toward protection, due to widespread concerns on politically sensitive issues such as employment, tradition, national prestige. The shared competence between the Community and the Member States allows for differences in national policies also between Member States, besides those against non-Member States, thus hindering the creation of a real single market. Till present, composing national and sectoral divergences has been easier at the level of external trade policy, as broad protection for audiovisuals fits all interests, and Member States have reached consensus on a special treatment for audiovisuals (Galperin, 1999a). However, recent changes in the structure of European audiovisual industry could result in substantial shifts in the bargaining game underlying the EU position on the issue. As EU audiovisual companies become increasingly integrated in larger firms and extend their activities beyond a strict specialization in audiovisuals, they could develop stronger interests in gaining access to wider markets, and call for opening up the EU audiovisual market, both as an enlarged market for their activities (at regional level) and as a concession to obtain inter-sectoral liberalization by other countries (at international level). Depending on the outcome of this intra-industry trade-off between rents from protection in the audiovisuals and gains from liberalization in other products, the existing coalition between industry interests and cultural diversity supporters could eventually break up, and urge the EU audiovisual policy to find new equilibria. Still, the way to this new stance seems to be, if ever, still quite long.

3.3 The North American Free Trade Agreement: a double-edged solution

It has often been stressed that the North American Free Trade Agreement (NAFTA) is structured around two key bi-national relationships: US-Canada and US-Mexico (Mosco and Schiller, 2001). This is the case in the cultural sector as well, where different provisions were agreed (Galperin, 1999b). The NAFTA includes a specific exception for cultural industries in free flows of goods and services between the US and Canada, establishing that any measure in this field (which, as defined by Art. 2107, encompasses the audiovisual sector) shall be governed exclusively in accordance with the provisions of the 1989 Canada-United States Free Trade Agreement (CUSFTA). Also, “the rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States” (Annex 2106). As a matter of fact, the CUSFTA cultural exception (Art. 2005) left the door open to trade retaliation in response to protectionist policies in this sector, so that the exact extent and value of

---

2 A detailed review of recent changes in the features of EU audiovisual firms is provided by Messerlin and Coe (2004).
this exception are not clear (Acheson and Maule, 1996). Additional problems arise with regard to the NAFTA exemption, where Canadian and US interpretations diverge as to the extent of the right of retaliation, arguing on whether it refers only to measures inconsistent with CUSFTA provisions or with NAFTA rules as well (Neuwirth, 2004).

On the other hand, between the US and Mexico, trade in cultural services has been liberalized under the NAFTA regime, which contains some GATS-plus provisions and commitments. Concerning the approach to liberalization, the NAFTA has pioneered the negative list or “list it or lose it” approach. Moreover, the NAFTA not only governs cross-border trade in services, but establishes specific rules on investment and on temporary entry of business people, both in goods and in services-related activities. As we have seen, the GATS deals with these issues only as modes of services supply, while a number of RTAs will subsequently adopt a NAFTA-like approach. Lastly, the NAFTA sets up the right to non-establishment as a general obligation. Nowadays, such a provision, which has no equivalent in the GATS, may be of great relevance in facilitating e-commerce (Sauvé, 2002), which, as we shall see, is increasingly vital for trade in audiovisual services.

The US fully liberalizes the sector, except for a reservation concerning non-discrimination measures for investment in cable television.

Mexico maintains only some exceptions to complete liberalization of cultural industries in the NAFTA. Notably, Mexico imposes some restrictions as to national treatment and performance requirements in entertainment services, such as the need for government authorization to import radio or television programmes for broadcast or cable distribution or to employ non Mexican announcers and presenters, the obligation to use the Spanish language or Spanish subtitles in broadcasting, the preference for Mexican nationals in live broadcast programs, a 49% limit to foreign investments in enterprises operating in the cable television sector, and a content quota for Mexican films up to 30% of annual screen time of every theatre. Regarding future measures, the only reservation in audiovisuals refers to the right to adopt or maintain any measure relating to investment in, or provision of, broadcasting, multipoint distribution systems, uninterrupted music and high definition television services.

To sum up, the NAFTA, more than finding a solution to the trade-off between international integration and cultural diversity, states that the trade-off itself does not exist. On the Canadian side, cultural diversity can only be furthered by carving it from international economic integration, while from the US standpoint liberalization of cultural products, notably audiovisuals, is “the best way to promote cultural diversity” (WTO, 2005).

Canadian and US positions in multilateral negotiations have been similar to those expressed in the NAFTA. Canada did not make any commitment in audiovisual services and took MFN exemptions in co-production and distribution. Canadian negotiators have always stressed that cultural products have specific non-economic features that make them different from other goods and services, thus calling for a dedicated regime (such as the UNESCO Convention) and for their exemption form economic integration agreements. As a matter of fact, Canada has introduced a cultural exemption in all its RTAs3, clearly pursuing a “culture off the table” policy (Acheson and Maule, 1998). Beyond concerns on national identity, which have particular relevance among Canadian policy-makers3, Canada’s stance is supported by strong business interests as well. Despite protection measures, Canadian audiovisual producers only account for a small share of domestic markets, which are dominated, for both linguistic and geographical proximity, by US exports (Galperin, 1999b). In this framework, it is not surprising that Canadian audiovisual industry lobbies for protection against foreign competition, and particularly against the US industry (the ‘direct rival’).

3 The three RTAs concluded by Canada to present contain a cultural exemption modelled on NAFTA Annex 2106: Canada-Chile FTA, 1997, Chap. O, Annex O-O6; Canada-Israel FTA, 1997, Chap. 10, Art. 10.5; Canada Costa-Rica, 2001, Chap. XIV, Art. XIV.6. A similar clause is included in the last draft of the Free Trade Area of the Americas (FTAAs), Chap. XXII, Art. 7.
The US, at the other end of the spectrum, is fully committed to open its audiovisual market both multilaterally and in its RTAs, as we shall see. The audiovisual industry has a substantial influence on US trade agenda, pushing towards the same direction at multilateral and regional levels. US audiovisual companies are the world’s leading producers and exporters, and have always pushed for opening up foreign markets. Among others, the Motion Picture Association of America (MPAA), created by the ‘big seven’ of the US film industry, and the Recording Industry Association of America (RIAA), which represents the ‘big four’ of the US recording industry and a large number of other labels and distributors, exert a strong lobbying pressure in order to protect their members’ interests, including interacting with the US Trade Representative (USTR). Moreover, imported audiovisual products account only for a small share of US domestic market, so that it seems to be no reason for US policy-makers to perceive free flow of audiovisuals to be threatening national identity and cultural diversity. Concerning Canada’s cultural exemption, it can be argued that US negotiators have accepted it as it does not hurt US industry’s interests too much: flows of US audiovisual products to Canada are important in any case, and the US have found juridical support to ensure it in other superposed regimes.

Audiovisual industry’s interest are a key element in understanding Mexico’s position as well, and enlighten the mechanics leading to different outcomes between GATS and NAFTA. As illustrated by Galperin (1999b), Mexican audiovisual industry is relatively strong, in terms of both domestic and foreign market shares, and should benefit from greater liberalization. US market is of a special relevance for Mexican companies, because of the large Hispanic community, which, for cultural and linguistic reasons, is a potential major audience. Furthermore, on the internal market, language, content and genre barriers act as a protection for Mexican producers from US products. In this sense, it is reasonable to argue that Mexican cultural industry has asked negotiators for a liberal trade agenda when dealing with the NAFTA, and for more cautious position when making commitments at multilateral level. As a matter of fact, Mexican commitments in the audiovisual sector in the GATS are limited to private cinematographic films and private film-screening services, and with more reserves than those kept for these sub-sectors in the NAFTA. However, political factors, the ‘second level’ of the game, are relevant as well in understanding results achieved in negotiations. As stressed by Bhagwati (1993, p. 43), making explicit reference to Mexico-US relationships in NAFTA negotiations, in bilateral bargaining “weak states may agree to specific demands of strong states”. In the multilateral framework it is more difficult to exert such pressures, as ‘weak’ States can easily create coalitions with (stronger) like-minded States. While it was not the case for Canada-US relationship, this adds intelligibility to Mexico’s position on liberalization for audiovisual services.

With regard to the effects of RTAs on other countries’ positions, Sauvé (2002, p. 16), commenting on NAFTA negative list approach, remarks that “since the NAFTA took effect, Mexico played a pivotal role in extending this liberalization approach and similar types of disciplines

---

5 The US is the only WTO Member, with the Central African Republic, to have made commitments in every audiovisual sub-sector, keeping only minor limitations on national treatment (for the grants from the National Endowment for the Arts) and on market access (with regard to mode 4 and to investment in radio and television broadcast stations) (WTO, 1998).

6 US audiovisual industry dominance in global markets is due, among other factors, to the size and wealth of the domestic market, which, combined with the home bias of consumers preferences, allow to exploit economies of scale, the ‘universal appeal’ of its products (Sauvé and Steinfatt, 2000), first-mover advantages, no linguistic barrier with major recipient markets.

7 Buena Vista (Walt Disney Company), Metro-Goldwyn-Mayer, Paramount Pictures, Sony, Twentieth Century Fox, Universal Studios, Warner Bros (Time Warner).


10 For instance, audiovisual companies based in other Spanish-language countries could seriously erode Mexican industry’s domestic market share.
… on services to other RTAs it has signed with countries in South and Central America”. It seems to be the case for liberalization in the audiovisual sector as well.

Chile-Mexico FTA, in force since 1999, adopts the NAFTA tripartite scheme in dealing with services (investments, cross-border trade, temporary movement of business people). Mexico’s reservations on audiovisual services are quite similar to those included in the NAFTA. Chile, which in the GATS did not make any commitment in audiovisuals, and took an MFN exemption on cooperation agreements, largely opened its market to Mexican audiovisual industry, only keeping some limitations with regard to nationality of owners of radio and television broadcasting stations and press companies, and reserving the right to impose a up to 40% Chilean content quota programs in television programming.

Similarly, the Mexico-Northern Triangle (El Salvador, Guatemala, Honduras) FTA, concluded in 2000, presents some GATS-plus features, both in its general structure (NAFTA-type) and with specific regard to the audiovisual sector. Mexico’s reservations are the same as in the Chile-Mexico FTA. Guatemala and Honduras, which in the GATS did not make any commitment in audiovisual services, commit to quasi-complete opening of their markets, with some reservations on nationality requirements for the direction and management of cultural activities (Honduras) and for artists in live performances (Guatemala). El Salvador undertook limited commitments in the GATS in value-added audiovisual services. Liberalization under the Mexico-Northern Triangle FTA reaches a much broader extent, even if substantial limitations are kept on television and radio broadcasting (but on temporary bases).

Thus, it seems that RTAs can indeed facilitate achieving consensus on a sensitive topic such as audiovisual services. However, the Parties to these FTA share similar cultural and historical features, so that international integration is likely to be less perceived as a threat to cultural diversity. In this sense, it would be hard to affirm that this model can be easily transposed to the multilateral level.

3.4 South Asia: cooperation without commitments

Other integration agreements between countries in the same geographic region tend to exclude the cultural domain from trade rules, while establishing cooperation policies and institutions in this field. This is the case for the agreements concluded by South Asian countries participating in the South Asian Association for Regional Cooperation (SAARC) (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka). The SAARC, created in 1985, aims to accelerate the process of development in Member States, and to facilitate economic integration in the region, working as a forum to negotiate trade agreements. The audiovisual sector has been a key area for cooperation since the beginnings, and a specific Committee is in charge of producing and broadcasting programmes on various themes and music festivals in order to promote regional culture.

Since 1995, SAARC countries have implemented a preferential trade agreement (SAPTA), which in 2006 has been replaced by the South Asian Free Trade Agreement (SAFTA), aiming at establishing a free trade area by 2016. However, services were not covered by the SAPTA, and the proposal to include trade in services under the framework of the SAFTA should be examined next October.

If agreed by the Committee of Experts, future negotiations on audiovisual services could reveal controversial. India is the largest world film producer, and the only SAFTA Member State to have made commitments in the audiovisual sector in the GATS (but taking a MFN exemption on co-production agreements). It seems likely that Indian audiovisual industry (the so-called Bollywood) will ask for broad opening up of other Members’ markets. This could result in an even harsher clash with Pakistani government, notably in the film sector. Since 1965, Pakistan has imposed a ban on Indian films. Besides political tensions, the ban obeys to industrial concerns as well, as the majority of Pakistan’s film industry (also known as ‘Lollywood’) continues to claim that the removal of the ban would result in a “complete Bollywood-isation of Pakistan”, and in the definitive end of film
production activities in the country. As Pakistani film industry already seems to be “comatose”\textsuperscript{11}, some producers and cinema owners are trying to form a coalition lobbying for opening up domestic market, as the only way to revitalize the sector (Ghafoor, 2005). But Pakistani government has already shown an overall tough position versus Indian exports, refusing to grant MFN status to India (Sen, 2006). Implementation of the SAFTA already announces as highly contentious, and consensus on audiovisuals liberalization does not seem to be next item on the agenda.

\textbf{3.5 US regional strategy and trade liberalization in audiovisual services}

The US is a key player in analyzing and understanding the dynamics of the trade and culture dilemma, both at global and regional level. In the GATS framework, the US has always advocated the need for stronger and wider commitments. As already said, at the end of the Uruguay Round the US was one of the very few countries to make substantial commitments in the audiovisual sector, leading to almost full liberalization of its domestic market. This stance has been firmly pursued in the subsequent round, even if a slight change has occurred in the negotiating strategy. During the Uruguay Round the clash on audiovisual had been total, while the US request on audiovisuals for GATS 2000 negotiations shows a less rigid approach, moving from an ‘all-or-nothing’ approach to the call for sub-sectoral commitments. However, US interest in audiovisuals has not decreased, and liberalizing the sector stands as a major priority in its trade policy.

During the last five years, the US has been putting in place a new trade policy concerning cultural products, and notably audiovisuals. This strategy might exert strong influence on future developments of this domain, thus deserving careful consideration in our analysis. Building on Wunsch-Vincent (2003), Bernier (2004) stresses that the last five RTAs concluded by the US\textsuperscript{12} show a shift in US audiovisual trade policy. In addition to the negative list approach, adopted in all US RTAs, these ‘new generation’ agreements have three main common features:

- dismantling of existing financial support schemes for culture and content production is not asked for;
- concerning local content requirements and other barriers to trade based on traditional technologies, US negotiators aim at freezing existing regulations in RTAs schedules, more than at eliminating them;
- a special focus on complete liberalization of e-commerce.

As stated by Wunsch-Vincent (2003), a core element of the new fast-track authority on trade agreements, established with the approval of the “Bipartisan Trade Promotion Authority Act of 2002”, was that the US Trade Representative (USTR) was asked to “conclude trade agreements that anticipate and prevent the creation of new trade barriers that may surface in the digital trade environment” (p. 8), which will be of increasing relevance for trade in audiovisuals. As a matter of fact, the author finds the source of the so-called US ‘digital trade agenda’ in the recent alliance between American business associations that represent high-tech firms (such as the Information Technology Industry Council) and audiovisual producers associations (such as the MPAA), oriented to protect members’ interests from new digital trade barriers. Due to both lobbying activities and the strong US position on international audiovisual and information technology markets, the Congress has supported industries’ requests.

\begin{footnotesize}
\textsuperscript{11}Accordingly to data reported by Ghafoor (2005), in the 1970s Pakistan had 1300 cinema halls, and produced around 300 movies per year. In 2005, cinema halls across the country were diminished to 270, and only 18 movies had been produced in 2004. Pakistani stars are increasingly moving to Bollywood, in order to get better working conditions (Yavar Inam, 2004). Moreover, due to piracy, Indian films have already ‘invaded’ Pakistan.

\end{footnotesize}
The focus on e-commerce explains the apparently surprising US position on classical barriers to
the free flow of audiovisual products. Requests to ‘freeze’ and not to eliminate existing
discriminatory measures in audiovisual services aim at avoiding future further limitations. In the e-
commerce sphere, which is not yet subject to pervasive regulation in many countries, this is
equivalent to a complete liberalization commitment.
Concerning subsidies, which have been largely used by the US as well, the US strategy seems to take
into account that, as in many countries audiovisual industries depend on public financing, the
request for their full elimination could make negotiations climate too harsh (Bernier, 2004). Moreover, it has been observed that the US audiovisual industry has generally not opposed the use
of support measures by other countries, which does not affect seriously its interests, while keeping a
more tough stance on protection instruments, which limit market access (Gagné et al., 2004)\(^\text{13}\).

We turn now to describe RTAs recently concluded by the US, and the main RTAs currently
under negotiation, in order to assess how the digital trade agenda is implemented in each of them,
and to understand the role played by political economy mechanisms in these negotiations.
All agreements examined have the same structure. Dedicated chapters deal with cross-border trade
in services, investment (but public subsidies are excluded from the investment discipline), and e-
commerce. As negative list approach is adopted, each Party lists its limitations to opening up
domestic markets in schedules of reservations, concerning existing measures (Annex I or A) and
room left for future measures (Annex II or B). We have already stressed that the negative list
approach has proved to be more efficient in achieving a broader liberalization extent, but, at the
same time requires the Parties to be perfectly aware of all applicable measures. With regard to the
audiovisual sector in recent US RTAs it has been stated that this approach penalize US partners who
cannot correctly evaluate the real extent of liberalization they are committing to (Bernier, 2004;
Gagné et al., 2004). US schedules are the same in each RTA, listing the same few reservations made
in the GATS.

In the Chile-US FTA, under the investment and the cross-boarder trade in services chapter,
Chile liberalize the audiovisual sector, but keep some reservations, such as national content quota up
40% in broadcasting, some nationality requirements for top positions in the Chilean media,
limitations on radio licenses according to the percentage of invested foreign capital (Annex I), and
the right to grant differentiated treatment under future international agreements concerning cultural
industries (Annex II). However, Chilean audiovisual market is much more open than in the GATS.
No discriminatory measure in digital products existed in Chile when the FTA was signed, and Chile
abandoned its initial orientation to make a reservation for any future measure affecting e-commerce
under Annex II (Gagné et al., 2004). Thus, e-commerce is completely liberalized. The MPAA
President declared that US entertainment industry would have gained broad benefits by this chapter,
due to its open content and to developed Chilean telecommunication infrastructures\(^\text{14}\).
The MPAA, the RIAA, the Advancing the Business of Technology Association and the Association
for Competitive Technology stated strong satisfaction for the conclusion of the Chile-US FTA,
affirming that “this Agreement demonstrates that a trade agreement can harmonize two important
objectives – trade liberalization and the promotion of cultural diversity” (MPAA and RIAA, in
USTR, 2002).

Singapore-US FTA chapter on cross-boarder does not apply to subsidies (Art. 8.2). Concerning
audiovisuals, Singapore make only two reservations, but with quite broad coverage, both under
Annex B. These limitations regard the right to adopt any measure in relation to broadcasting services
receivable by Singapore’s domestic audience and to the distribution and publication of printed
media. Complete liberalization of e-commerce is provided.

\(^\text{13}\) Cultural diversity supporters and US critics have interpreted this position as implying that only rich States can protect
their cultural identity, as they can afford paying for it (Gagné et al., 2004).
\(^\text{14}\) Jack Valenti, quoted in Bernier (2003) and referred by Gagné et al. (2004).
In the GATS, Singapore undertook commitments in audiovisual services concerning production, distribution and public display of motion pictures, video recordings, sound recordings, with the exception of all broadcasting and audiovisual services and materials that are broadcasting-related. In its report, the Industry Sector Advisory Committee on Services for Trade Policy Matters favourably comments the provisions on audiovisual services, stating that “while Singapore took a fairly broad reservation that limits its obligations for television content broadcast to local audiences, its obligations in all other forms of AV services, where US commercial interests are strongest, are excellent. Moreover, the Singapore FTA avoids the ‘cultural exceptions’ approach that has flawed several prior trade agreements, while demonstrating that a trade agreement has sufficient flexibility to take into account countries’ cultural promotion interests” (ISAC 13, 2002, p. 8).

The six States\textsuperscript{15} participating in the Central American Free Trade Agreement (CAFTA) have completely liberalized e-commerce, and substantially liberalized audiovisual domestic markets, but to different extent. El Salvador Guatemala, Honduras, and Nicaragua have made only minor reservations, mainly concerning preference for national artists in live performances, regulations on foreign performers, national content quota in advertising and the right to grant differentiated treatment under international agreements. As stressed by Bernier (2004), this broad opening up of national markets is quite surprising, notably as these countries, which in the GATS did not take serious liberalization commitments\textsuperscript{16}, could rely on the relatively more prudent US-Chile and US-Singapore FTA as a model. Some explanation could be found in the different bargaining power (Bhagwati, 1993), that however, is not sufficient, as Costa Rica and Dominican Republic have managed to keep broader reservations, notably on national content quotas in radio and television programming, on minimum ownership requirements by nationals in the audiovisual sector (Annex I), and on future measures according differential treatment under international agreements (Annex II). It is worth of notice that Costa Rica, Dominican Republic, and Nicaragua have not yet ratified the CAFTA, and governments are facing strong internal opposition, mainly by trade unions and civil society.

The Industry Sector Advisory Committee on Services for Trade Policy Matters welcomed the CAFTA, as “none of the non-conforming measures in this sector represent onerous restrictions on US exports of filmed entertainment”, and the measures adopted by Central American countries “may be of local importance to stimulate local cultural expression, and do not significantly distort trade” (ISAC 13, 2004a, p. 11).

The Australia-US FTA (AUSAFTA), while similar in structure, partially differs from the other recent US FTAs as to the extent of liberalization Australia agreed upon. Australia took broad reservations, keeping in place its national content quotas in commercial television and radio (Annex I) and obligations for pay TV’s on expenditure in Australian programs (Annex II, but Australia engaged to consult with the US if circumstances should require to rise these obligations). With regard to investment in audiovisuals, Australia achieved to maintain existing restrictions on foreign ownership in newspaper and broadcasting companies, and obligation to notify to Australian authorities each investment in cultural companies (Annex I). Moreover, Australia reserves the right not to comply with MFN clause in case of co-production agreements (Annex II). E-commerce was fully liberalized. As observed by Bernier (2004), Australia managed to preserve existing restrictive measures in traditional audiovisual services, but loosened the right to introduce stricter measures (that is, the ‘freezing’ strategy of US negotiators). It has been argued (Papandrea, 2004) that this solution could represent a useful compromise in order to advance in conciliating trade and cultural policy priorities.

\textsuperscript{15} Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua; Dominican Republic joined in the negotiations later.

\textsuperscript{16} El Salvador made commitments in value-added audiovisual services, Nicaragua in motion picture and video tape production and distribution services and in film projection services; Guatemala and Honduras did not take any commitment.
The case was different for new media services, where Australia’s capacity to adopt a range of policy measures was reduced, and subjected to an ambiguous condition\textsuperscript{17}.

Differences between the way US digital trade agenda is implemented in the AUSFTA and in the other FTAs reflect Australia’s position on trade in cultural products, and a stronger negotiating capacity (Australia is the only developed country with which the US has concluded an RTA over the last years). The Australian government largely supports domestic audiovisual industry, and justifies protection by linking it to the preservation and promotion of national identity and culture\textsuperscript{18}. The same policy has been adopted at the multilateral level, where Australia did not make any GATS commitment in audiovisual services and took MFN exemptions with regard to co-production agreements and “measures taken to respond to any unreasonable measures imposed on Australian services or service suppliers by another Member”. Audiovisual industry has a long tradition in lobbying in order to obtain protection, and is increasingly stressing its links with protection of cultural diversity. Recently, an Australian Coalition for Cultural Diversity, which represents the various industry groups, has been created (Papandrea, 2004), in order to better coordinate lobbying action.

In negotiating the AUSFTA provisions on audiovisuals, lobbying has been strong on both sides. In the US, the agreement was supported by the MPAA, the RIAA, the Entertainment Industry Coalition for Free Trade, and Time Warner (USTR, 2004a). Australian audiovisual industry campaigned against any opening up of domestic markets, and expressed concerns on the final outcome (Papandrea, 2004).

In the US-Morocco FTA, reservations on existing measures in the audiovisual sector regard conditions that companies must comply with in order to be established in Morocco and engage in executive production (Annex I). Reservations on future measures are potentially broader, including the right to adopt measures to grant differentiated treatment under international agreements with respect to ‘cultural activities’ (and not ‘cultural industries’ as in other US’ FTAs), to impose local presence requirements to cable service operators, or satellite service suppliers that provide encryption-based subscription services to consumers in Morocco, and to intervene on investment in facilities for the transmission of radio and television broadcasting and cable radio and television (Annex II). E-commerce is completely liberalized, and no reservation is taken with regard to new technologies.

This agreement was strongly supported by US cultural industry, such as RIAA and the Entertainment Industry Coalition for Free Trade, and the Industry Sector Advisory Committee on Services for Trade Policy Matters stated that “while Morocco did take a few reservations with respect to this sector, the reservations are narrow, specific, and unlikely to disrupt existing commercial trade in audiovisual services” (ISAC 13, 2004b, p. 10).

However, the US-Morocco FTA did have a specific political relevance to the US government. In the words of the former US Trade Representative, Robert Zoellick, “step by step, the Administration is working to build bridges of free trade with economic and social reformers in the Middle East. Our plan offers trade and openness as vital tools for leaders striving to build more open, optimistic, and tolerant Islamic societies. In Morocco … we are laying the building blocks that will lead to President Bush’s vision of a Middle East Free Trade Area” (USTR, 2004b)

Currently, the US is negotiating a number of RTAs, which are likely to pursue the same policy with regard to audiovisual products and digital trade. For instance, the draft text of the Colombia Trade Promotion Agreement (CTPA) is quite similar to those we have surveyed, as to both structure and coverage: e-commerce is fully liberalized, and audiovisual markets are opened to a considerable extent.

---

\textsuperscript{17} Measures can be adopted only so to ensure that access to Australian content or genres “is not unreasonably denied to Australian consumers”.

\textsuperscript{18} Papandrea (2004) provides a detailed analysis of Australian policy on trade and culture issues.
The US-Malaysia FTA has broad strategic objectives, as Malaysia is perceived as a key partner for military and security policy in the region. At economic level, the FTA aims at providing US companies with a gateway to South East Asian region.

A draft text is not yet available, but the USTR has already stressed that strong benefits are expected “in a range of service sectors where market access is limited and US companies are highly competitive”, such as audiovisuals (USTR, 2006b), while the US audiovisual industry has expressed its support to negotiations (USTR, 2006c).

Audiovisual products have been a main controversial issue in the US-Korea FTA (KORUSFTA) since its very beginnings. South Korea, which in the GATS made broad commitments in sound recording and motion picture and video tape production and distribution services, has kept in place a ‘screen quota’ system, requiring local cinemas to project Korean films at least 146 days in the year. The US has put the reduction of this system as a substantial condition to start FTA talks, and in January Korea eventually agreed to halve it by July (Sung-ki, 2006). Not surprisingly, Korean film industry has begun a fierce campaign against the KORUSFTA, calling for the need to protect cultural diversity, while, on the US side, the MPAA has expressed its support to the initiative (USTR, 2006a).

Audiovisuals are not the only contentious area in the agreement, and interest groups are creating broad and heterogeneous coalitions to lobby against it. The Institute for International Economics has recently provided an in-depth analysis of main objectives and major problems in negotiations (Schott et al., 2006). According to this study, the FTA could result in remarkable economic gains for both countries. Moreover, Korean government sees the agreement as an opportunity to improve political relationship and to increase domestic competitiveness with regard to other Asian countries, through both a ‘lock-in’ effect on internal reforms and a privileged access to US market. On the other hand, for the US, “an FTA with Korea would be the largest bilateral trade deal since NAFTA, yielding substantial export gains while also advancing important US foreign policy objectives in East Asia” (p. 2).

But in order to achieve these goals both countries shall overcome relevant domestic opposition. For Korea, besides audiovisuals, opening up automotive, agriculture (notably, concerning rice and beef) and pharmaceutical markets to US exports are the main challenges. For the US, the key problems concern resolution of steel antidumping problems, access to the US visa waiver program, and coverage of production in the Kaesong industrial complex (extension of trade preferences to this North Korean area is a vital element in Korea’s internal policy of ‘constructive engagement’, while the US do not accept to grant preferences to the North Korean regime).

Negotiations have started in June, and at the end of the first round agreement was reached on about 40% of issues (Yonhap, 2006). During negotiations, US and Korean labour federations, US small farmers associations and Korean agriculture, entertainment, civic groups, and health sectors have jointly asked their governments to carefully reconsider the agreement. On the other hand, a US-Korea FTA business coalition, which brings together US manufacturers, semiconductor and big food companies, and a Korean business group was including the Korea International Trade Association; the Korea Chamber of Commerce and Industry, the Federation of Korean Industries, and the Korea Federation of Small and Medium Businesses, are campaigning for the KORUSFTA (Klingner, 2006).

Diverging positions are quite palpable at political level as well. Korean government wants to use trade policy for internal dialogue with the northern part of the country, while some US senators have already affirmed that if Kaesong products will be included in the FTA, the Congress will reject it (Dong-min, 2006). Moreover, the Korean President, which has set the completion of the FTA as one of its main objectives, is loosing political influence, and has already been criticized by its own party for agreeing to the four US preconditions for initiation of trade talks without demanding reciprocal agreements (Klingner, 2006). On the US side, President Bush’s trade promotion authority will end in June 2007, thus amplifying the effects of Congress’ decisions.
During the next negotiations round, scheduled for mid-July, both countries will have to tackle a number of contentious issues in order to achieve economic integration. Concerning cultural diversity, both governments have already shown to be inclined to subject it to economic and political integration priorities, but the deal is not yet done, and interest groups’ pressures could make it necessary to strike another balance. Moreover, as the International Network for Cultural Diversity (INCD), a global network of cultural producers and non-governmental groups, which has been a major player in pushing towards the UNESCO Convention, has now expressed its support to the Korean film industry, negotiations will be subject to strong external pressures as well.

This survey of recent and current US RTAs proposes interesting elements in order to assess US strategy on the position of audiovisual products in international agreements. The US continues to perceive audiovisual as normal economic products, which should be completely included in the existing trade regime. In the US view, this is not a threat to cultural diversity, which would benefit from increased flows of cultural products. After harsh conflicts in the WTO, this goal is now pursued by a two-track strategy, in which initiative at regional level is oriented to support advances in the multilateral framework, in a bottom-up approach (Wunsch-Vincent, 2003). As progress in the WTO has proved to be extremely slow, US is increasingly engaging in RTAs, were the limited number of negotiating partners and the existence of specific converging interests make it easier to implement US trade agenda on opening up audiovisual markets. However, this does not mean that US is withdrawing from WTO negotiations. On the contrary, outcomes achieved in regional agreements should help US to create ‘friend’ coalitions, making possible to agree on global rules consistent with US authorities and industry perception of the relationship between trade and culture. In this sense, according to the literature on regionalism, RTAs act as a laboratory to elaborate new solutions on sensitive issues, and as a building block toward multilateral consensus.

Whether the US strategy will achieve its goal is more difficult to assess. The capacity to involve relevant partners in RTAs, and difficulties related to the management of an increasing number of parallel agreements are likely to be most relevant issues.

4. Conclusions

Cultural diversity is becoming a core concern for governments and civil society, and a range of international instruments to protect and promote it is being developed, both at global and regional level. However, this trend has often proved to clash with the process of international economic integration. RTAs, which are increasingly perceived as a powerful – although controversial – tool to promote international integration, deal with the ‘trade and culture’ dilemma as well, proposing different regimes for the governance of cultural diversity, going from an integral ‘cultural exemption’, as in the EU’s preferential agreements with other regions, to a broad liberalization of trade in cultural products, as in most of the RTAs concluded by the US. While GATS negotiations in audiovisual services in the Doha Development Agenda do not make substantial progress, the different two-level game of trade negotiations at regional level seems to allow for new solutions. A narrower agenda, fewer participants in the negotiations, and specific features of the cultural sector in regional contexts play a major role.

Traditionally, analyses of RTAs focus on assessing whether they are “stumbling blocks or building blocks” for the multilateral trading system. When considering possible equilibria for the trade-off between cultural diversity and economic international integration, the perspective slightly changes. The survey of agreements presented in this paper shows that the major rival players in the WTO arena use RTAs in order to spread their own vision of the issue: the EU and Canada exclude cultural matters from trade provisions, while the US is pursuing an active strategy aimed at opening up the audiovisual markets of preferential trading partners. The ultimate goal does not seem to be the establishment of regional trading systems as an alternative to the WTO, but rather the creation of broad coalitions in order to make one or the other stance prevail in the multilateral regime.
References


Galperin, Hernan, 1999b, ‘Cultural industries policy in regional trade agreements: the cases of NAFTA, the European Union and MERCOSUR’, Media Culture & Society, 21 (5), pp. 627-648


Messerlin, Patrick A., 2000, ‘Regulating culture: has it “Gone with the Wind”?’ in Productivity Commission, Achieving Better Regulations for Services, Conference Proceedings, Canberra: Australian National University


WTO, 1998, Council for Trade in Services, Audiovisual Services: Background Note by the Secretariat, S/C/W/40, 15 June

WTO, 2005, Council for Trade in Services, Communication from Hong Kong China, Japan, Mexico, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and United States, TN/S/W/49, 30 June

