



**Culture and Trade in the Americas:  
Possible Approaches in Support of Development Objectives**

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**Current Situation**

Culture has, at times, been seen as an impediment to development. If not an outright impediment, it certainly has not always received the attention that it deserved. For some who have pursued a narrow definition of development, a definition that has tended

*Statistics on the culture sector's contribution to national wealth illustrate the economic and job-creation potential of cultural industries. In OECD countries, the culture sector accounts for 4% of GDP, while it accounts for 1 to 3% in developing countries. In Canada, around 5% of the labour force is engaged in cultural industries, compared to 2.8% in the United States.*

to be expressed in simple measurements of economic growth, culture played an unimportant role. It had little apparent value on either the analytical or planning sides of the development equation and was therefore frequently simply ignored.

This perception is gradually starting to give way as both theorists and direct development actors have come to appreciate culture's true role in national development.

Consequent to this realization has been the follow on acceptance of the proposition that if culture matters and has a role that needs to be understood and factored into the development planning equation – then the same must apply to cultural diversity.

The 1995 UNESCO Report on the World Commission on Culture and Development “*Our Creative Diversity*” encouraged the change in perception, and sought to expand the concept of creativity and promoting a new awareness of the multiple

cultural issues that are present in the process of sustainable human development. The most recent foreign policy statement of the government of Canada supports this view when it states “Countries are looking for the appropriate balance between openness to international culture and support of their own cultures to protect and enhance local identity and diversity.” (Canada in the World, Government Statement, 1995, p.4)

The Canadian International Development Agency (CIDA) has been a leader in this debate and has a longer history of integrating cultural issues into its strategic policies than most development actors. With the adoption of the framework for sustainable development in 1991, CIDA identified five conditions for sustainability, including that development must “take into account social diversity and pluralism”. This commitment was reiterated with the adoption in 1997, of the strategy for sustainable development, which stipulates that: “sustainable development does not define a particular path for development but focuses on what would enhance the quality of life. It requires the capacity to adapt to constantly changing conditions, as well as the flexibility to work with uncertainty, and with differences in local conditions and in public expectations shaped by culture, values and experiences.” (Our Commitment to Sustainable Development, CIDA, 1997, p.3)

Embracing cultural diversity is recognised as essential as it contributes to social and economic development:

*“Cultural diversity is a key component of development in that it promotes social cohesion, nation building, identity and pride. Cultural diversity is also a strategic resource for a country. Cultural diversity is embodied in products and performances of different sectors of society and ensures a diversity of domestic and foreign content.”* (INCP, 5<sup>th</sup> Meeting, Cape Town, 2002)

The importance of taking into account cultural diversity cannot be simply reduced to its strategic value in improving project design and cooperation practices. It is an essential part of national development. Assigning importance to and recognizing the significance of cultural differences within Latin American society is crucial to social cohesion, peace and therefore sustainable development. By promoting cultural diversity in direct and indirect ways, governments and other social actors can make a positive

contribution to social cohesion, as was recognized in the Quebec City Summit Plan of Action:

*“Recognising that respect for and value of cultural diversity contribute to social and economic dynamism, and are positive factors in the promotion of good governance, social cohesion, human development, human rights and peaceful co-existence in the Hemisphere,...”* (Quebec City Summit Plan of Action)

In this context, both regional and sub-regional dimensions of cultural diversity take on a crucial role in the provision of sustenance and viability to national cultural industries. Policy planners, working in close concert with cultural actors across the entire spectrum of cultural industries, must work to incorporate these element more fully than in the past. There is an identified need for concerted strategies and policies at the regional level that would feed into regimes and procedures for economic coordination and integration (e.g., free circulation for books, motion picture and audiovisual regimes, financing, etc.). It must be very clear that, by promoting the regional dimension, we are strengthening national positions and capacities to both determine and promote their futures.

In the case of most developing countries, the importance of national cultural industries and the cultural sector as agents of economic growth and pillars for strengthening national cultural identity is still not fully appreciated by domestic public and private decision-makers. This is also true with respect to planners in international financial institutions, although this situation is perhaps starting to change slowly.

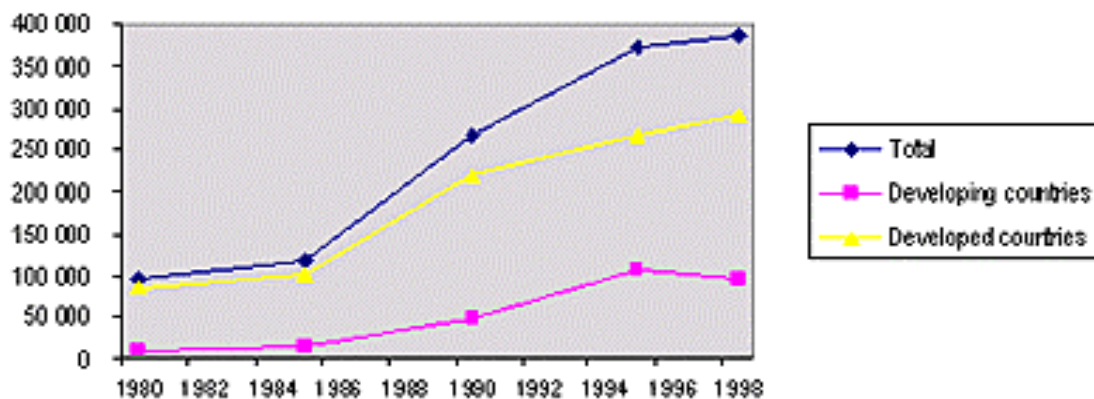
In this context, there is today a greater awareness and disposition on the part of multilateral and regional financial agencies to recognize the importance of cultural factors in development, and their ability to sustain and nourish the social fabric of the entire community. While their initial efforts were limited to the area of cultural and historic heritage, they must now undertake activities of national and regional scope that are supportive of the ongoing efforts of UNESCO, and others, to broaden the conceptual and operational framework.

## State of Cultural Industries in the Americas

Most recently, the structural and commercial realities of cultural industries have been most influenced by the development of new digital technologies as well as emerging trends in national, regional and international regulatory policies. In the latter case, this has involved primarily a process of deregulation and, in some cases; privatization of state owned or controlled commercial entities. These factors are having an impact on the context in which cultural goods, services flow between countries and the environment in which investment and ownership issues, in these industries, are considered. Cultural industries have undergone a process of internationalization, realignment and progressive concentration. In some cases, cultural conglomerates have emerged, raising concerns about the creation of global oligopolies.

*The global reach of the North American film industry, for example, is unique. Hollywood today earns half of its revenue from overseas markets, compared to just 30% in 1980. Around 85% of world wide screened films today are made in Hollywood.*

### World Trade of cultural goods (in millions of US \$) 1980-98



Source. 'Study on International Flows of Cultural Goods between 1980-98'. UNESCO, 2000. UNESCO

***Latin American cultural industries: current status and outlook***

The world music industry achieved \$40 billion in sales in 1996, exceeding the publishing and motion picture industries. Ninety percent of the sales were concentrated in six transnational firms that are fully integrated. Coordinated chains of retail outlets, live performances, television programming, cinema, cable, Internet and satellite broadcasting characterize these entertainment conglomerates.

In marketing terms, these firms tend to focus their efforts on a small stable of commercially successful artists. Promotion efforts tend to be concentrated as a consequence to the detriment of business models that would promote either diversity or the work of new artists.

These major firms have a market presence that is both national and international at the same time, which has resulted in their accounting for approximately 80 percent of record sales in the region. They service the local markets with supplies of both "international" (English-language) and national or regional (Spanish-language) music products.

Not all such firms, however, are foreign based. Strong corporate players such as Grupo Cisneros in Venezuela, MultiVision Mexico and the recording subsidiaries of Globo (Brazil) are also competitors in local and regional markets. These firms that originally grew from foundations in Latin

***Number of units sold and revenues (US\$) in Latin American markets (M = million)***

Country	1995	1996	1997
US Latin (1)	----	36.1 M units	44.1 M units
	----	\$391.7 Million	\$490.0 Million
Mexico	60.3 M units	65.9 M units	68.5 M units
	\$299.0 Million	\$399.3 Million	\$472.0 Million
Argentina	15.9 M units	18.5 M units	27.4 M units
	\$290.3 Million	\$285.3 Million	\$386.0 Million
Colombia	20.3 M units	19.8 M units	18.4 M units
	\$195.2 Million	\$205.3 Million	\$233.0 Million
Chile	8.5 M units	48.4 M units	----
	\$81.7 Million	\$84.3 Million	----
Brazil	75.0 M units	99.8 M units	108.0 M units
	\$1,53.1 Million	\$1,394.5 Million	\$1,450.3 Million

(1) The Latin market in the United States is included for purposes of comparison

Source: IFPI, RIAA, industry reports, quoted in Yudice, "La industria de la musica..." op.cit.

America are themselves rapidly becoming international players as well and many have active corporate strategies that are regionally focused rather than nationally focused.

The publishing industry has traditionally been extremely vibrant, drawing historical inspiration from strong sectoral traditions in Argentina, Mexico and Spain. While each center has developed its own unique characteristics, for example in Mexico there has tended to be heavy emphasis on state involvement, such sectors are also subject to technological and structural factors. In Brazil, where there are 410 firms active in the publishing market, business is concentrated on a small number (fewer than 10) of major publishing houses. FTD, Circulo do Livro and Saraiva Editores together account for some 70 percent of the industry's sales. In 1990 Brazil published some 22,500 titles with 239 million copies. By 1995 output had expanded to 320 million copies, and 40,500 titles. The high point was reached in 1997, with 380 million copies and more than 51,000 titles. In 1999 publications had declined to 43,600 titles and 295 million copies. Of interest is the fact that half of this output dealt with topics related to education, science and technology.

The publishing industry in Latin America is subject to changing regulatory environments. For example, relaxed ownership and control rules have led to a situation where Spanish investors have acquired a major stake in both the Mexican and Argentine publication industry. Following a vertical business model, the publication industry also increasingly is seen as controlling retail and distribution networks as well.

Television production and services have also been able to penetrate a good portion of the domestic market. It is estimated that the great majority of Latin American families (about 85 percent) have access to television signals. In this context, it is open, private and commercial television that predominates. Of some 600 open-signal television stations in existence a decade ago, only 18.3 percent were publicly run. Of those, only 11 percent belonged to educational and non-profit cultural institutions, while the remainder was operated by various agencies of the public administration. Given the major imbalance between domestic production of TV programs and imported programming (which accounts for more than 50 percent), several countries in the region (Peru,

Colombia, Venezuela, Chile, Ecuador, Argentina and Bolivia) have established legal quotas for programming of domestic origin.

Cable television is also growing in Latin America. By 1997 it was estimated that there were more than 16 million subscribers, primarily in Argentina, Brazil and Mexico, which accounted for 70 percent of the total. Studies, however, have shown that the rate of growth of cable penetration is significant. In terms of revenues, the industry is estimated to be between 8 and \$10 billion a year. Governments in the region, and social policy advocates, are concerned that local production continues to supply a healthy share of the programming that is broadcasted.

***Royalties generated by the audiovisual industry in Latin America, 1997 (Millions of dollars)***

Sector	Total royalties	Imports	Exports	In-house production
Cinema	204	194	2	12
Video	283	278	0	5
Open TV	1,606	318	208	1,497
Pay TV	1,048	772	13	289
Total	3,141	1,562	223	1.807

In Latin America, the cost of access to cable broadcasting still represents a major hurdle, which for the moment ensures that the audience is largely, restricted to middle and upper income levels. As a broadcasting medium, however, cable television the prospect of greater diversity and specialization of content. It also represents a potentially important national space for education and endogenous cultural action.

Source: Les Industries Culturelles dans la Relation Europe Amerique Latine, IDB, Biarritz, 2000.

From the viewpoint of intra-regional and international exports, the principal Latin American export item are “*telenovelas*” (serial drama or “soap opera”), accounting for about 80 percent of the total value of television exports. Exports of telenovelas accounted for some \$100 million in 1997 for TV Globo (Brazil) and Televisa (Mexico), and no more than \$15 million for firms in Colombia, Argentina and Venezuela.

## **Overview of Culture in Trade Agreements**

The treatment of culture in international trade law is not a settled issue. Forerunners of recent disputes involving magazine and film distribution policies occurred

in the 1920s when European countries used screen quotas to protect their film industries from the influx of American films. By 1945 the protective legislation of many European countries had been removed or amended in part because of American threats or boycotts. Article IV of the GATT in 1947 provided an interim solution to the trade frictions by permitting the use of screen quotas in the case of films, thus implying that films were goods and subject to the GATT disciplines that dealt only with goods. In the 1960s, the United States requested that the GATT investigate the restrictions placed by countries on television programming but no agreement was reached on this issue. Subsidies for films and television programs were an issue in the Tokyo Round of GATT negotiations in the 1970s, and the United States requested consultations about the program restrictions contained in the "Television without Frontiers" directive of the European Community in the 1980s.

In the Canada-United States Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA), culture was stated to be off the negotiating table. Special wording was included in both agreements so as to provide a measure of exemption for the cultural industries. Less ambiguous wording was included in the cultural exemption in two bilateral free trade agreements with Israel and Chile. The issue of culture became part of the services negotiation in the Uruguay Round when consideration was given to the inclusion of a specific annex on audiovisual services. Some parties argued for a cultural exemption similar to the FTA, while the United States opposed, and continues to oppose, such an exemption and argues for an open market for cultural products. Under the WTO, audiovisual services are identified as a service activity subject to the obligations of the GATS.

One issue pervading these discussions has been whether the output of the cultural industries is a good or service because of the differing obligations under GATT 1994 in the case of a good and the GATS in the case of a service. The WTO panel decision on periodicals brought the goods-services question to the fore. The distinction determines the obligations that a country faces in international trade agreements. In the periodical decision, the production and distribution of periodicals was considered by the dispute panel to be both a good (the hard copy of the magazine) and a service (the editorial and

advertising content that can be transmitted in non-tangible forms). Both the obligations of the GATT and the GATS were seen to apply.

In the case of culture, if a measure affects the international movement of the hard copy of a book, newspaper, periodical, film, tape, or CD, goods are involved, even if the content of each is considered a service. The same content could be sent by wire or wireless transmission and it would be considered an intangible service, at least until it was stored on some physical object. A tariff placed on magazines and a tax placed on the editorial content of magazines have similar effects even though the former is directed at a good and the latter at a service. Many of Canada's cultural policy measures such as subsidies, tax incentives, quotas, restrictions on private ownership, and the operation of public enterprises like the CBC, affects both goods and services in circumstances where both are combined. The question to be resolved is how distinctions are to be made between goods and services when the two are combined and where different trade rules apply. This problem affects items as diverse as advertising, bananas, music, and steel. Financial, storage, and transportation services are combined with the sale of most tangible items.

### ***Canada's Approach to Culture and Trade***

Canada's trade in culture is subject to the disciplines of the WTO, FTA, and NAFTA. Trade in cultural goods is subject to the non-discrimination disciplines of GATT 1994 with two exceptions. Article IV of GATT permits countries to establish quotas for the exhibition of domestic films, and Article XX(f) permits exceptions for measures related to the protection of national treasures of artistic, historic, and archeological value.

The rules for subsidies in support of cultural goods producers require that the subsidies be paid directly to the producers, as in the case of postal subsidies to periodical publishers. This means that tax credit schemes that are widely used to support audiovisual production may be considered in contravention of the national treatment provisions of the GATT. Subsidies also have to conform to the Agreement on Subsidies

and Countervailing Measures (one of the Multilateral Agreements on Trade in Goods), which states that certain types of subsidies can be challenged if they cause serious harm to producers in other countries.

Another multilateral agreement, the Anti-Dumping Agreement, may also apply. It is frequently alleged that American magazine publishers engage in unfair competition by dumping their editorial content into Canada after having recouped the costs of production in their home market. It is difficult to apply the concepts used for assessing the dumping of items such as automobiles or textiles where the prices in the domestic and foreign markets can be compared. In the case of a magazine, book, film, or television program, for example, all the costs of producing the content are incurred before any sales are made. Prices for the sale of film rights or advertising space tend to depend on conditions of market demand. Thus, a television program sold to a broadcaster in Edmonton will be sold for less than the same program sold in the Montreal market which in turn will be less than in the New York market. It would be misleading to state that the program is being dumped in the lower priced smaller markets or that it is unfair competition because advertising rates are lower in the market with the smaller audience.

Trade in cultural services is subject to the provisions of the GATS. The general treatment of services, as described in the discussion paper on services, applies to cultural services. Canada has taken an exemption for MFN under Article II for the co-production treaties for film and television production that it has with a number of countries. Bilateral co-production treaties provide benefits for the two partner countries that are not available to other countries. Canada did not take an MFN exemption for its film distribution policy, one that grants more favorable treatment for certain American distribution companies but is not available to new foreign investors. Under Part III of the GATS, Canada made no market access or national treatment commitments for any cultural services and none in the wholesale trade services sector for musical scores, audio, and video recordings. It is likely that there will be pressure for countries that have made no or limited commitments to offer some in future services negotiations.

The treatment of cultural goods in the NAFTA (Annex 2106) is conditioned by Article 2005 of the FTA, which sets out the exemption for the cultural industries. Under this paragraph, the parties are free to intervene in support of their cultural industries. Paragraph 2 of Article 2005 introduces the limitation that allows a party to take measures of equivalent commercial effect in response to actions that would have been inconsistent with the agreement.

The cultural exception in NAFTA Annex 2106 is also applicable to cultural services between Canada and Mexico and Canada and the United States, but not between Mexico and the United States. However, because cultural services are not mentioned in the services chapter of the FTA (no reference is made in FTA Annex 1408 to cultural services), there can be no obligation concerning services and no recourse to measures of equivalent commercial effect between the NAFTA parties.

Cultural trade also overlaps with issues related to electronic commerce. Print and audiovisual content are distributed via the Internet for which trade disciplines have yet to be developed. Because of convergence between telecommunications and broadcasting, which are subject to different regulatory regimes, it will become increasingly difficult to sustain different sets of rules. Those involved in developing "new media" content argue for an open system for distributing their content. This is a challenge to the traditional policy framework where the regulatory system for broadcast licencing mandates Canadian ownership and Canadian content rules apply.

A development that requires recognition by Canada in future trade negotiations is the maturing of many of Canada's cultural industries and the growing importance of foreign markets for their exports and investments. Export importance varies by industries within the cultural sector but the trend is the same for all of them and especially for new media. Canadian cultural interests will want to ensure continuing access to foreign markets, which will require some compromise with those seeking to maintain Canada's existing domestic cultural policies.

As consumption of cultural goods and services spreads all over the world, production itself tends to concentrate. This results in an oligopolistic market with a highly asymmetric structure. The effects of this market profile are as yet unknown: while we are aware that a large share of the cultural products circulating in most countries are produced elsewhere, we know very little about the impact of this global cultural market on citizens, audiences, businesses and governments. In this context a number of considerations can be identified.

First, culture as an issue in and of itself has moved to the forefront. The past few years have seen the emergence of a powerful interest in culture resulting from a combination of diverse phenomena such as globalization, regional integration processes and cultures claiming their right to express themselves - all this in a context where cultural industries are progressively taking over traditional forms of creation and dissemination and bringing about changes in cultural practices.

Second, the issue of "culture and trade" has now acquired prime strategic significance. Cultural goods and services convey and construct cultural values, produce and reproduce cultural identity and contribute to social cohesion; at the same time they constitute a key free factor of production in the new knowledge economy. This makes negotiations in the cultural field extremely controversial and difficult. As several experts point out, no other industry has generated so much debate on the political, economic and institutional limits of the regional and global integration processes or their legitimacy. When culture is put on the table, it often prompts complex discussions on the relationship between the economic and non-economic value of things.

Third, some governments understand that international trade law is exercising growing pressure on their ability to influence the production and distribution of cultural goods and services within their borders. This has increasingly polarized positions in trade negotiations whenever they deal directly or indirectly with cultural issues.

Fourth, and as stated in the UNDP's 1999 *Human Development Report*, two-thirds of humanity do not benefit from the new model of economic growth based on the

expansion of international trade and the development of new technologies, and are excluded from the construction of the information society. This situation reveals gaps in terms of individual countries' capacities and resources to produce cultural goods and services. In many developing or small countries, these capabilities are actually shrinking. As a consequence, trade flows of cultural goods are unbalanced, heavily weighted in one direction, and cultural industries show great disparities in their structures both within and between the various regional trade blocks.

## **Exemptions and New Instruments**

### **The Exemption Approach**

Some countries, such as Canada, have approached the culture – trade equation, including within the Free Trade Area of the Americas negotiations, from a perspective that seeks to maintain maximum flexibility to pursue cultural policy objectives. In the Canadian case, this approach is conditioned by past experience gained in existing bilateral trade agreements, and the government has affirmed its intention to seek an exception to achieve this goal. The negotiating forum in which the FTAA process is being played out, also represents an opportunity to internationally promote recognition of the importance of preserving cultural diversity. To this end, Canadian officials have issued a discussion paper on the topic of "Cultural Diversity in the FTAA Negotiations" and have put forward draft language for the Preamble to the Agreement:

RECOGNIZING that countries must maintain the ability to preserve, develop and implement their cultural policies for the purpose of strengthening cultural diversity, given the essential role that cultural goods and services play in the identity and diversity of society and the lives of individuals;"

As the successive Canadian governments have explained, the preservation and promotion of cultural identity is a core objective for Canada in all international trade negotiations. In the past, this objective was reached through the mechanism of a cultural exception such as was the case in the arrangements with Chile and Costa Rica. At the

multilateral level Canada initially pursued a strategy that favoured and overall cultural exemption but was unable to win broad consensus for this position. Nevertheless the architecture and structure of the General Agreement on Trade in Services (GATS) leaves open to individual member states the final decision on whether or not obligations would be accepted vis-à-vis individual service sectors. Canada was free, therefore, to simply not accept any commitments in cultural-related sectors.

### **The New Instrument Approach**

The promotion of a new international instrument is another strategic approach that Canada and a number of other countries are actively considering. Fundamentally, such an instrument would establish the fundamental ground rules determining the intersection between cultural and trade policies. At its heart, such an instrument would provide that governments (at different levels) could regulate, promote and otherwise support efforts that encouraged cultural expression without coming into conflict with international trading rules – particularly those rules that might have been designed primarily to regulate “normal” merchandise goods or commercial services. While such an instrument would not compel governments to action, it would provide them with a sort of blanket assurance that “accepted” policies or programs would not be subject to dispute settlement or other forms of challenge.

The basic parameters of such an instrument would:

- Provide clear definitions as to its scope of coverage.
- Would include tangible (goods) as well as intangible cultural expressions.
- Define the range of financial and fiscal support measures, other regulatory instruments and ownership requirements that applied.
- Balance the range of intellectual property rights against the needs to promote a healthy cultural sector, including one that is diverse.

## **Conclusions and Recommendations**

Within the Americas, it is acknowledged that cultural goods and services are to a great extent already subject to negotiation and rule making among and between national governments. Such negotiations have traditionally taken place on the basis of an agreed set of broad principles. The principles underpinning such negotiations, however, have not tended to be drawn from the cultural sector itself. They have been drawn from a rich history of trade and economic theory that has delivered, individually and collectively, a wide range of benefits. These conceptual underpinnings need to be broadened to taken into account the following principles that are drawn from the cultural sector:

- Recognize the compatibility between conditions of cultural diversity and the enhancement and expansion of markets. Markets are, in a fundamental way, strengthened when consumers are able to select the cultural goods and services that they wish to consume from a wide array of sources. Diversity in the provision of cultural goods and services which in turn provides a layer of protection against monopolistic producers or suppliers.
- Acknowledge that cultural goods and services are conceived, produced and consumed in forms that are significantly different from other products. Cultural goods and services are a public good in which the community, whether it be a region or a country, has a vital stake. Such a principle is not inconsistent with accepted rule making approaches in other areas. The negotiation of sector specific approaches is present in such areas as agriculture, telecommunications and professional services.
- Agree that measures and policies that are fundamentally enabling in character are distinct from measures and policies that are prohibitive or exclusionary in nature. Policies and programs that encourage are designed to fundamentally strengthen not only cultural sectors but also the market place for such outputs. Prohibitive policies, on the other hand, tend to restrict personal choice (and freedom) and can be seen as an attack on certain cultures or cultural products or traditions. This principle requires national policy makers to exercise discipline to reject programs

and measures that are simply protective in nature while focusing their talents and energies on directions that are enabling.

These principles would set a firm foundation for processes wherein countries can discuss and debate the kinds of rules, regulatory structures and government measures that would be acceptable in the enhancement of cultural diversity. Within this framework, agreement would be sought on methods and modalities that could be applied to the analysis of policies and measures so as to ensure that the ultimate objective was indeed the promotion of cultural diversity rather than a response to simple protectionist pressures of specific interest groups.

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