ECONOMIC INTEGRATION TREATIES AND THEIR RELATIONSHIP WITH INTERNATIONAL TRADE OF CULTURAL GOODS AND SERVICES
The Latin American perspective

Presentation by

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[INTRODUCTION]

The organizers of the Symposium have asked me to talk about the economic treaties of the Latin American region in terms of their relationship with trends in the international trade of cultural goods and services.

I became interested in this subject while I was director of UNESCO’s Cultural Industries Division in Paris. Dry as they may sound, economic treaties can be a very interesting source of information if they are analyzed carefully. Economic treaties are the result of national, sub-regional, regional and global compromises. As such, they reflect different and often diverging realities, ranging from national protectionism to neo-liberal openness, from the interests of the local markets to those of crude globalization. It is very interesting to observe the treatment which culture is given in the global sphere, where decisions are usually made solely from an economic and commercial perspective.

Unfortunately, I do not have time today to describe the economic integration treaties that exist in Latin America in detail. Although this topic can become a legal maze if full details are not provided, I will deal with it in very general terms, and will give additional information if requested by the audience.

[CULTURAL INDUSTRY POLICY DEVELOPMENT IN LATIN AMERICA]

It is difficult for me to regard Latin America as a unified whole. In spite of sharing two similar languages, the notion of “Latin America”, like the notion of “Asia”, is used to refer to very different economic and cultural realities. If I had to highlight a common feature in this topic, I would perhaps argue that it has only been in the last two decades, that all Latin American countries have discovered the economic dimension of culture. The Governments previously regarded Culture as a noble, but yet unimportant, entertaining, elitist and unessential matter. Policies in support of the local production and distribution of cultural goods and services have been either absent or not a priority. Ironically, despite being pressed for development, these countries have ignored the economic potential of cultural expressions. However, Latin American countries are increasingly realizing the need for comprehensive policies in support of cultural industries, not only to spearhead local economic development, but also to safeguard cultural and spiritual values.

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A rather anthropologic conception of Culture has also hampered the economic exploitation of cultural expressions, which is regarded as somewhat “sacrilegious” and “commercial”.

Cultural industries such as publishing, recorded music, radio and television, and cinema are of capital importance because they reflect diverse cultural identities. However, unlike the food and textile industries, they will never go beyond artisan levels if they are left alone to the forces of supply and demand. Therefore, if governments wish to develop local cultural industries, they need to provide industry support measures such as subsidies and fiscal incentives. As we will see, however, this national policy decision may clash with obligations arising from economic integration treaties.

[BRETTON WOODS]

History may be of help in getting some perspective on this subject. After the Second World War, several institutions were formed which were intended to co-ordinate and regulate international economic co-operation. They are referred to as the Bretton Woods institutions, known today as the International Monetary Fund and the World Bank. The original intention was to create a third institution to handle international economic co-operation. This body was never created, but during the preparatory process several counties started negotiations on trade rules and tariff concessions. These agreements became known as the 1947 GATT (General Agreement on Tariffs and Trade) and they regulated international trade until the creation of the World Trade Organization (WTO) in 1994.

All governments from Latin America signed the GATT and are now part of the WTO.

[UNESCO’S FLORENCE AND NAIROBI AGREEMENTS]

By an unwritten code, the international community excluded cultural goods from the GATT regulations. Soon after, in 1950, the Florence Agreement was adopted under the auspices of UNESCO to regulate the free international flow of cultural goods. This agreement reflects UNESCO’s ideal that wars can be prevented by fostering knowledge and understanding among countries. To date, almost 100 countries have ratified this treaty, including some Latin American countries. This treaty was completed in 1976 with the Nairobi Agreement, which extended the benefits of “free flow” to other cultural goods that had resulted from recent technological developments in the audiovisual field.

The Florence Agreement is in line with the principles of GATT and is as such a liberal model where international frontiers are completely open to cultural goods. However, the agreement includes some safeguard clauses to prevent imported cultural goods from becoming a threat to local products. These clauses were introduced by the United States of America in 1966 at the time of
the signing of the treaty and are the precedent of the “cultural exception” clause, a clause which – as we will see - has become very popular within the new WTO framework.

[GATT MECHANISMS]

Let’s come back to GATT. For 47 years, and by means of successive negotiations among their member States, GATT was a very effective mechanism to reduce tariffs and to set in place anti-dumping measures that were soon accepted universally. Two of the principles that were introduced by GATT are the “most-favoured nation” treatment and the “national” treatment.

“Most-favoured nation” means that every time a member state improves the benefits that it gives to one trading partner, it has to give the same “best” treatment to all other GATT members, so that all remain equal and no discrimination is made.

The “national treatment” principle means that imported and locally produced goods should be treated equally. In other words, Governments cannot subsidize a local product to make it more competitive than an equivalent imported product (or apply taxes to the imported product to achieve the same result).

After GATT’s termination in 1994, these 2 principles were incorporated in the new legal structure established by the WTO treaties.

[REGIONAL INTEGRATION AGREEMENTS]

However, there is an exception to the general validity of the most-favoured nation clause. Developing countries are allowed to create special commercial or tariff zones, and in this case third countries cannot use the most-favoured nation clause to receive the benefits that these (developing) countries grant to each other on a reciprocal basis.

Thanks to these “permits”, that still are valid under the WTO treaties, Latin American and Caribbean countries have established the following regional, sub-regional and bi- and trilateral economic integration agreements:
- regional agreements such as SELA (Sistema Económico Latinoamericano) and ALADI (Asociación Latinoamericana de Integración)
- sub-regional agreements, such as the Cartagena Agreement (aka the Andean Pact), established by Colombia, Venezuela, Ecuador, Peru and Bolivia; or MERCOSUR, established by Brazil, Argentina, Uruguay and Paraguay.
- several bi-lateral and tri-lateral agreements, which are based on geographical vicinity or other affinities

The case of Chile is very special. Chile was the first Latin American country to establish a neo-liberal open policy in the 70s. In order to do so, Chile had to leave the Cartagena Agreement. Having consolidated its economy by itself,
Chile is now once again increasing economic cooperation with other countries in the region.

Mexico is another special case. Mexico is part of the TLC (Tratado de Libre Comercio) agreement with the USA and Canada. Because it is a tariff agreement between developed and developing countries, this agreement contravenes the GATT rules. In a way, TLC is the precedent to ALCA (Área de Libre Comercio de las Américas), which – as we will see – aims to integrate USA with all the Latin American countries.

[WTO]

Most of the agreement mentioned above were negotiated and established under GATT’s rules. However, GATT’s last multilateral trade round, the “Uruguay Round” (1986-1992) changed international trade law considerably. The Uruguay round:

- created the World Trade Organization as an inter-governmental organization (GATT had no solid institutional basis)

- extended WTO’s coverage beyond goods, to also include services that are protected by intellectual property. WTO covers trade in services (under the General Agreement on Trade of Services, or GATS) and trade-related aspects of cultural property (Agreement on Trade-related Aspects of Intellectual Property Rights, or TRIPS).

The reason for this inclusion is the increasing importance of cultural goods and services in the balance of trade of industrialized countries². But the drawbacks of applying the same rules to cultural goods as to other commodities were immediately noticed by a group of countries during the negotiation of GATS.

The application of the “national treatment” to cultural goods and services forbids any subsidy to local creativity, as it requires openness to imports of cultural goods and services from any other WTO member state.

The application of the “national treatment” clause was immediately regarded as something dangerous for local cultural goods. Total openness to similar foreign products can make local expressions disappear – local expressions which contain a given culture’s own expressions and symbols, and a given society’s identity’s spiritual messages.

² In 1998, USA exports in cinema, recorded music, books, television programmes and software amounted to more than the US$ 60,080 million corresponding to traditional sectors such as agriculture, automobile, aerospace and defense (International Intellectual Property Alliance 1998 report). In the UK, creative industries’ 1997 exports amounted than more than US$ 12,500 million. The UNESCO Institute of Statistics estimates USA 2002 exports in US$ 288.723 million, which is a 5% increase vis-à-vis the 1994-2002 period (International Flows of Selected Cultural Goods and Services, 1994-2003).
In addition, many countries were reluctant to apply this norm to the realm of culture, as it is frequently violated in other trade areas – notably the case of agriculture, where many developed countries subsidize their products.

European countries and Canada posed some resistance against GATS. These countries regarded GATS as a threat for cinema and audiovisual products, as the survival of these industries in non-mainstream languages requires mechanisms that are equivalent to subventions. The application of the “national treatment” clause, opening the market to a powerful external industry, was regarded as a synonym of annihilation of the local product.

Being a cultural industry, cinema not only has an immense commercial interest, but is also a “content” industry, an entertainment industry which conveys ideas, reflects each culture’s own universe and has a certain impact in the collective consciousness.

The battle confronted those who favored total trade liberalization versus those who highlighted the spiritual and local content of cultural goods and services and argued that they were commodities of their own kind. The battle did not have a reflection in positive law, but rather resulted in the will of nonconformist countries to ignore WTO rules in the field of cinema and audiovisual goods and services. This has resulted in the persistence of the exceptions foreseen in the GATT regime, also known as the “cultural exception” clause. This clause now applies whenever national interests are at stake.

Latin American countries which have adopted a market-driven economy and consume extensive quantities of imported recorded music and audiovisual products did not participate directly in this confrontation. However, this battle has allowed them to discover both the enormous potential of their cultural products, and the limits set by the WTO regime to their promotion.

[ALCA and other AGREEMENTS]

Latin America is a continent where over 400 million use two very similar languages, Spanish and Portuguese. In comparison to other areas where linguistic diversity is a barrier (e.g. the European Union), this uniformity provides an enormous potential market for the distribution of cultural products.

However, the most ambitious commercial integration project came from the United States of America. In an attempt to counteract the increasing economic importance of the European Union, George Bush Sr. suggested in 1984 the creation of ALCA (Área de Libre Comercio de las Américas). This free zone would gather North American (Canada, US, Mexico), Central American (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama), South American (Colombia, Venezuela, Ecuador, Peru, Bolivia, Brasil, Uruguay, Paraguay, Argentina and Chile) and Caribbean countries (Jamaica, Dominican Republic and Haiti).
These negotiations seem, however, have come to a halt. Countries have made several reservations to free trade in the audiovisual and cultural sector, and Latin American countries have requested the US to revise its subsidies to agricultural products and to abide the rules established by the WTO.

ALCA negotiations were virtually non-existent in 2004. In parallel to ALCA, the US established a series of bilateral agreements with several Latin American countries. Agreements have been established with Mexico, Chile, Panama, and the Dominican Republic; and similar agreements are under negotiation with other countries. The multilateral system is being replaced by a bilateral strategy, which yields the United States better results. The United States are the main importer of South American raw materials and natural products, and therefore have great influence in the balance of trade of South American countries.

Within ALCA, Latin American countries are increasingly showing their concern regarding the safeguard of local cinema, audiovisual productions and higher education services. However, no Latin American country has yet announced any intention to use the “cultural exception” clauses foreseen by the WTO for developing countries.

All the agreements prior to the “Uruguay Roundtable” mentioned above (SELA, ALADI, the Cartagena Agreement and MERCOSUR) have general references to education and culture. However, these agreements do not regard culture as a subject matter of economic integration, and they therefore do not include any particular clauses regarding cultural goods and services.

Instead of specific rules for cultural goods and services, these older economic integration agreements have “cultural” equivalents, such as the “Andres Bello” agreement (Andean countries) and MERCOSUR CULTURAL. These agreements have financed invaluable research with regard to culture, including the first estimates on the economic impact of culture. As a result of these cultural agreements, there is body of doctrine is readily available for use of policymakers.

Prior to the “Uruguay Roundtable”, economic agreements never dealt with the commerce of culture. They were a reflection of national cultural policies, which never supported cultural industries systematically. The only exceptions might be the publishing industry, where UNESCO and CERCALC, over the last 30 years, have developed of support policies; and the establishment of specific cinema legislation.

The issues surrounding the “cultural exception” reflect an unresolved situation which causes tensions in the integration process of the world’s different economic groups.
Globalization is neither good nor bad in itself. On one hand, globalization brings an opportunity for every single human being to enjoy the creativity of other human beings throughout the world. On the other, the passive mass consumption of foreign culture may lead to neglect of the local culture. This applies especially to young people, who tend not to value their own culture if it is not reflected in the TV screens. The threat also arises when the power to disseminate stories and dreams are in the hands of a few, as reflected in the existing asymmetries in cultural goods and services.

Although developing countries do not have the required possibilities and technology to share and distribute their cultural expressions, they are very rich in imagination and creativity that are the ultimate source of cultural industries. It would be a pity if the information society were to be solely guided by commercial criteria, as this would entail making the humankind’s cultural heritage less rich and diverse, with the consequent ignorance and disrespect for others.

What is at stake is preservation of cultural diversity, which is as necessary to life and dignity as the ecological balance. Guaranteeing cultural diversity has become an ethical and political imperative for many world leaders.

The world has turned its attention to UNESCO, the international organization which gathers all countries, economic systems and cultures under the subject matter of education and culture. The Florence Agreement has regained importance. Although it does not refer to global exchanges of cultural services, the Florence Agreement provides a tool to balance liberalization and protectionism, hence providing a fertile ground for the cultural industries to thrive.

The International Community, though acknowledging that WTO is responsible for the regulation of international trade, has transferred to UNESCO the debate on the preservation of cultural diversity. In 2001, the UNESCO General Conference adopted unanimously the “UNESCO Universal Declaration on Cultural Diversity”. In 2003, the General Conference asked the Secretariat to draft a Convention for the protection of the diversity of cultural contents and artistic expressions, in adequate harmony with other existing legal texts.

Latin America and the rest of the world have placed great hope in this drafting process. UNESCO has a long background in the protection of intellectual property, and has extensive experience in promoting dialogue among the private and the public sector for the establishment of national policies in support of the cultural industries.

There are already signs that culture will be the engine of the world’s economy in the 21st Century. Cultural Diversity is the global capital which the
international community needs to stimulate for both economic reasons and ethical imperatives.

Since we have the privilege of being in India, a country with a rich cultural and spiritual heritage, I will end my speech by expressing the principle of cultural diversity with the great Mahatma Gandhi’s words:

"I do not want my house to be walled in on all sides and my windows to be stuffed. I want the cultures of all lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any."

Thank you very much.
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