

## Exploring the legal protection of Cultural Trade Protection in China

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**Abstract:** In the analysis of social and linguistic definition of culture, and on the through research of the definitions of culture home and abroad, the writer concludes that culture is an abstract conception, a physical and mental symbol of a Nation and the lifeblood. Culture is a dynamic concept, including popular culture, elite culture, which will be deepened and intensified by the progress of mankind. This research attempts to analyze the origins of the conflict of culture and trade from economic and give some legal perspectives.

### Introduction

As the world wild improvement of economy, the culture products become more and more important in the competition of the nations. Not only because the culture product can create massive fortune and fortune-related, but also it can increase added-value in manufacture and service industries by taking advantage of a large number of cultural and intellectual resource. At the same time, the culture and trade debate is increasing among the countries. The culture products pose dual attributes, which are culture and economic, and every state has its own opinion of the culture product. France and Canada argues that cultural products embody cultural property and they also exceed economic value. They also believe that the cultural product could earn economic value when they are exported to the other states, they also export their own inner value at the same time, and this result may cause some certain impact on the local culture identity in the import countries.

International culture trade not only brings significant direct economic benefits, its “integral effects” and “radiation effects” can also play a vital role as an engine of economic growth, especially for developing countries with rich culture resources. The scholars would like to reveal the inequality of international culture trade in the view of media. Herbert Irving Schiller argues American media is controlled by a few corporations that creating, process, refine and preside over the circulation of images and information which determines our beliefs, attitudes and ultimately our behavior.

### Theoretical basis of culture and trade

Nancy Snow reveals how the United States Information Agency became a bureaucracy deeply distrustful of dissent, and one-way in its promotion of American corporate interests overseas. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE) was adopted in 2005 and designed to allow States to protect and promote cultural policies. The history of human beings coincides with the history of culture, which is the fruit of the material and spiritual developments. On account of the significance of multilateral trade system for the development of the world economy over the passed 60 years, people give wishes to its solutions to the problems of trade and environment. With the development of WTO, the WTO agreement, together with SPS, TBT agreements and GATT make the fundamental rules for trade and culture in the fields of international trade. Rostam J. Neuwirth states that in the light of the drastic changes and rapid developments that characterized the 20th century, the past regulatory practices and legal experiments used to define the relationship between the broader issues of culture and trade, reveal

that even general or particular exceptions cannot fully separate areas described by apparently antagonistic concepts.

But due to the complexity and pluralist of the problem of culture and trade, it is quite difficult to solve the contradiction of them, which is one of the reasons that UNESCO convention on protection and promotion of the diversity of cultural expressions (CCD) become reality. Thus, we have to do some research on the legal effects, applicability, the specific definition as well as the relationship between culture and trade, and construct an effective and complete cultural trade legal system under the WTO and provide some useful and legislative Advice. International trade is one of the important reasons of cultural integration, but the basis reason could be owed to the externality of cultural products and cultural market failures. As to the value of culture and trade, it should be the balance of equality and efficiency, individual interest and national, social interest, the developed and developing countries interests. We should lean on the balance of cultural and trading policy internationally to the advancement of cultural diversity .When we talk about the conflict between culture and trade, it shows itself first in the battle on the film industry. And then in the Uruguay Round Negotiations of GATT1994, the French government had proposed "cultural exception", advocated trade and culture; especially audio-visual products should be excluded from the WTO trading system. Unfortunately, this idea had not reached the expectation of France. In last century, it putted forward the slogan of cultural diversity gradually and replaced the cultural exception, which is more neutral, more accessible to the majority of approval of other developed countries, such as Canada, Australia and developing countries. With the further liberalization of free trade, the Doha Round Negotiations, though it did not concern with cultural issues, the negotiations on audio-visual products went to stand still. Although the 2005 UNESCO has been ratified by a lot of nations, it has a long way to go to safeguard and promote the development of cultural diversity effectively.

### **Overview of the cultural trade legal system under the WTO**

As we know, the adjustment of cultural trade legal system is the cultural products, and the dissertation also categories the adjustment from domestic and international level. In general, Cultural products (goods), such as books, magazines, multimedia products, audio, software, videos, movies, audio-visual programs, such as handicrafts and fashion design, while cultural services includes drama, music, ballet, touring performances and other cultural matters. Lilian Hanania examines the effectiveness of the CDCE and offers ways by which its implementation may be improved to better attain its objectives. Hailing from various fields of international law, political and social sciences, his contributors work to promote discussions on the practical and legal influence of the CDCE, and to identify opportunities and recommendations for a more effective application. In addition, we should focuses on a very important concept of "cultural policy measure" of cultural trade legal system, which is the most direct expression of a country's trade attitude and policy and also one of the specific acts regulated by WTO legal system. As we can see, a cultural policy measure often appears as subsidies, restrictions on market access, taxation measures, licensing restrictions, foreign investment and ownership restrictions, domestic content requirements. The reason why a cultural policy measure could be applied, first of all, it is based on the attributes of cultural products .Second, the implementation of these measures is to protect our domestic culture. Cultural products are the main vehicle for cultural trade; it is the duty of a country to protect them. For the implementation of a country's culture, if such discrimination does not exceed the limit WTO rules, it can be seen as legitimate and reasonable.

### **Specific rules of cultural trade under the WTO**

Beginning with the principles provisions of WTO, such as the obligations Most-Favored-Nations, National Treatment and Market Access, it states that clarify the key terms is to determine the "like "product. This standard is one of the tools to distinguish that the differences between trade

protectionism as a legitimate non-discriminatory measures. And as I think, in determining the like cultural products or substantive products, it is balanced by the effects test and tax standard, such as the analysis of cultural policy development purposes, product manufacturing, consumer preferences, and production progress. Whether a cultural policy measures is to protect the domestic cultural products, and at the same time whether it results in arbitrary or unjustifiable discrimination to international trade to other countries should combined the chapeau with the specific. After analysis of the rules, I think it is reasonable to clarify the legitimacy of cultural policy measure. GATS, although affecting trade in services, countries also have enough freedom to choose the application of their rights and obligations. However the excessive flow for natural existence related directly with market access commitments of the trade barriers. Under the GATS market access restrictions, like quantitative restrictions under GATT, it generally has a direct bearing on the distinction between foreign products, but it should not prohibit or restrict the influx of foreign cultural products. Secondly, cultural policies related Most-Favored-Nation often show as joint-film shooting or the printing industry. In fact, the most-favored-nation exemptions are not in accordance with the basic theory of the cultural policy measure. And according to the provisions of Annex of GATS, the MFN exemptions should be terminated in the end of 2004. Although the time has long past, but the effectiveness of this provision, WTO Committee on Trade in Services has been no explanation in this regard.

### **Dispute Settlement Body of Cultural Trade under the WTO**

According to the panel and Appellate Body of WTO based on Article 3, paragraph 2 of DSU obtain the express, implied, and the compulsory jurisdiction, then take the specific case as an example, Generally speaking, first, according to the Vienna Convention on the Law of Treaties and Statute of the International Court of Justice, other international legal documents can be invoked as a fact by the WTO Appellate Body without regard of whether all WTO member countries are also the same party. Secondly, the contemporaneous or evolutionary interpretation contained in the judicial practice of the Panel and the Appellate Body can be applied to the dynamic culture. Through a analysis of Doha Round Negotiation, and a study into 2005 UNESCO CCD, we intend to find a possible solution for the problem of culture trading outside the scope of WTO framework. Being the first convention safeguarding cultural diversity, its content, purpose and those domestic and international measures taken by contracting states, and potential conflicts between UNESCO CCD and WTO will be discovered. According to legal explanation by panel, the possibility seems to be dim. If restriction on display should be cut off, it will not be approved by all member states in short time. The only way to solve this problem is to make modifications. With regarding to the possibility of making supplement about culture diversity, I think the answer is a positive one. In addition, I expressed my opinion on how to protect culture rights of our developing countries, and also on anti-dumping measures for audiovisual products.

### **Construct an effective and complete cultural trade legal system**

The rapid development of the Internet has led to a growing potential for electronic trade in digital content like movies, music and software. As a result, there is a need for a global trade framework applicable to such digitally-delivered content products. Yet, digital trade is currently not explicitly recognized by the trade rules and obligations of the World Trade Organization (WTO). Sacha Wunsch-Vincent provides a complete analysis of the related challenges in the ongoing WTO Doha Negotiations to remedy this state of affairs. It elaborates on the required measures in the multilateral negotiations to achieve market access for digital content and examines the obstacles that lie on the path to reach consensus between the United States and the European Communities. Does international trade in cultural products threaten cultural diversity in the developing world? SINGH, J. Pshows that nation-states at the forefront of the movement protecting cultural diversity are, in fact,

top exporters of cultural products, something that is not apparent in the mercantilist position taken by these states with respect to international trade in cultural products.

We can't deny that the free trade system plays an important role in the culture product, however, it may also result monopoly and finally appear "market failure". While America and a few other states prefer to emphasize the economic value of cultural products, and believe that cultural products are belonging to the range of commodity categories, therefore, the culture product should lead by the market. Because this dispute can't be solved in the long term by the WTO system, Canada and EU members are beginning to seek solutions out of this system. "The Convention on the Protection and Promotion of the Diversity of Culture Expressions" was passed by UNESCO on 20<sup>th</sup> October, 2005. The most character of this convention is that "culture activities, goods and services have both an economic and a culture nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value." In the introduction of Convention, it points out that: "Being aware that cultural diversity is strengthened by the free flow of ideas, and it is nurtured by constant exchanges and interaction between cultures." Thus we should do some research on the legal effects, applicability, the specific definition as well as the relationship between culture and trade, so as to construct an effective and complete cultural trade legal system under the WTO and provide some useful and legislative advice.

Culture is a dynamic concept, which will be deepened and intensified by the progress of mankind. The research then examines the challenges that policymakers are faced with in formulating cultural measures, and analyses UNESCO's theories which aims to protect the diversity of culture. Due to the complexity and pluralist of the problem about trade and culture, it is quite difficult to solve the contradiction of trade and culture. This is followed by a comprehensive examination of the treatment of 'culture' in global and regional trade agreements, including the framework of the GATT/WTO system, the WTO's judicial practice involving cultural products, and the treatment of culture under the EC/EU and NAFTA. Based on analysis of the rules of WTO, such as TRIPS Agreement, TBT Agreement and the Safeguards Agreement, it tries to find if it is reasonable to clarify the legitimacy of culture policy measure in the states. The author seeks to formulate a balanced view of the challenge of protecting and promoting cultural diversity while also recognizing the important goal of trade liberalization.

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