SYMBOLIC TOKENISM IN CANADA-U.S. CULTURAL SECTOR TRADE RELATIONS

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I. INTRODUCTION

On July 1st 2002, the *Globe and Mail* ran an article under the headline, "Dominant U.S. Culture Worries Canadians," reporting that 61 percent of Canadians "defined the threat [of American culture] as very or somewhat important." Indeed, for years some Canadian leaders had been saying as much. On January 27th, 1997, then-International Trade Minister Art Eggleton posed the question "Can Canada Maintain its Cultural Identity in the Face of Globalization?", acknowledging that Canada's "need to remain open to the world while continuing to champion Canadian culture has long proved a tricky balancing act." Referring to the tension between free trade and cultural policy, Eggleton went even further, declaring that the "survival of a strong, distinctive Canadian voice is closely linked to the survival of a strong and distinctive Canada," and "[t]he global economy will have an

impact on national cultures at least as great as its impact on national economies."[1]

Maintaining political existence and cultural survival against the perceived threat from American culture have deep and well-developed historical roots in Canada. Different eras reflect various reasoning, though concern perpetually focuses on viewing media as special in order to create a distinctive Canadian culture during the 1920s, to shape a Canadian self-image consistent with post-World War II national pride during the 1950s, and to preserve Canada's ability to chart a sovereign political course in the face of economic integration pressures from the United States during the 1960s and 1970s. At that time the Canadian-born, Harvard-based economist, John Kenneth Galbraith, had observed that "If I were still a practising, as distinct from an advisory, Canadian, I would be much more concerned about maintaining the cultural integrity of the broadcasting system and of making sure that Canada has an active independent theater, book publishing industry, newspapers, magazines and schools of poets and painters." Residing in the collective Canadian psyche shaped by the mythical, historical fact of a long, shared border that made themes of survival, unity, and independence omnipresent, the *need* for Canadians to demonstrate cultural distinctiveness remains remarkably strong. More than a half century ago, the Massey Commission asserted a direct link between political independence and cultural autonomy. More recently, the Caplan-Sauvageau Report on Broadcasting Policy stressed that "there can be no political sovereignty without cultural sovereignty".[2]

The burden of fortifying Canadian culture falls, for the most part, on what Canadians now call "the cultural sector," a policy issue

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which Americans, by contrast, have long referred to merely as "entertainment"; that is, motion pictures, TV and radio programming, books, magazines, and sound recordings. Conceivably, such cultural products possess the ability to influence tastes and morals, shape the opinion and self-image of a people, to strengthen national bonds, foster what used to be referred to as "national spirit" and is now called "national identity", to nurture or erode the critical faculties necessary for democratic societies and, ultimately, to play a role in defining and consolidating a nation. Despite such supposedly pervasive influences, few authors specifically or concretely explain how cultural policies shape national identities but instead argue by assertion and appeal to abstractions. By contrast, this essay will explore the relationship between culture and cultural products by drawing on evidence in the research record to evaluate specific cross-cultural influences.[3]

Esoterics aside, the commercial dominance of U.S. entertainment in the Canadian marketplace also influences the Canadian policy responses. U.S. cultural products have long commanded an overwhelming market share in Canada. By the 1920s, for instance, U.S. magazine circulation north of the 49th parallel exceeded comparable domestic publications by an eight-to-one ratio. For many years Hollywood has controlled about 95 percent of the Canadian cinema market. Since World War II American TV programming similarly has dominated Canadian English-language viewership. Whatever else may be observed about conflicts between Canada and the United States over cultural policy, the persistence of the problem can be explained by its two irreducible features: the relationship between cultural products and national identities, and the longstanding U.S. dominance of the Canadian market for these goods.[4]

"Americans dismiss Canadian complaints of U.S. cultural domination," John Thompson and Stephen Randall observe, "and do not understand, much less sympathize with, Canadian policies to achieve cultural sovereignty." To American audiences, Christopher Sands argues in a similar vein, "the idea that Canadian culture is under threat is difficult to accept." Americans find such claims problematic nowadays partly because of the rising consumption of Canadian cultural products in the U.S. Such notable Canadians as Alice Munro, Rohinton Mistry, Wayne Johnston, Alanis Morissette, Shania Twain, Avril Lavigne, Mike Myers, Jim Carrey, Peter Jennings, James Cameron, and Atom Egoyan are only a few of those Canadians who

have acquired an appreciative American audience. In some cases the levels of their commercial and critical success have been truly meteoric. Alanis Morissette, Shania Twain, and Celine Dion sold a combined 155 million albums in the 1990s; Celine Dion has become the most popular North American female singer in any genre. Alice Munro, a regular contributor to *The New Yorker*, has been favorably compared to Anton Chekov, the great Russian master of the short story. Writing in *Slate* magazine, the economist Paul Krugman turned the tables on the usual direction of cross-border cultural incursion when he observed that Boston-area "residents who indulge their tastes for Canadian divas... undermine the prospects of local singer-songwriters." With the cross-border tide in cultural products apparently flowing from North to South in some cases, it is easy to understand why American trade negotiators condemn Canadian cultural policies as disguised restrictions on trade. The sharp difference between perspectives must be highlighted because American commentators are just as correct in pointing out individual and sectoral success stories in U.S. markets as are Canadian analysts who point to the overall U.S. dominance of the Canadian market as a rationale for cultural policies.[5]

At the political level, dissonance between free trade and Canadian cultural policy has been of increasing relevance to Canada-U.S. trade relations for some time, a situation described variously as "a quandary," "a paradox," and "contentious" or even "intractable." Cultural sector relations have moved from being episodic irritants to emerging as a systemic problem for further North American economic integration. Resolution through litigation has replaced diplomatic negotiation, and despite Canadian trade measures having changed (they have become more promotional and less protectionist), the tenor of commentary has grown more pessimistic. "There are indications that U.S. tolerance levels are not as high as they were a few years ago," Roger Frank Swanson observed in 1976, concluding that "indeed, in a bilateral context, the cultural sector might best be regarded as symptomatic of future trends in the U.S.-Canadian relationship. Amenable neither to clear definitions nor to definitive solutions, these problems will persist and, in all probability, increase." A generation later, Dennis Browne described the cultural sector as "a burr under the saddle of Canada-U.S. trade relations." And with the wounds inflicted by the WTO's *Canada Periodicals* decision still fresh in 2000, Ivan Bernier believed that "unless some-

thing is done in the coming years to solve the problem, chances are that the existing tension between trade and culture will increase rather than decrease." These warnings suggest a need for better diplomatic management or carefully crafted policy solutions that are equal to the magnitude of the problem.[6]

Given such longstanding Canadian concerns, the absence of a cross-border consensus on the legitimacy of cultural products, and the increasingly practical problems posed by free trade and cultural policy, this essay raises two big questions: *What influence does foreign entertainment have on national identity and culture? Given the answer, how should the current international policy initiative to reconcile open trade with the promotion of national culture be interpreted?* The first question raises an empirically accessible puzzle about the relationship between culture and cultural products and will minimize the appeal to abstractions, generalities and arguments by assertion. The second question tackles the chief current international cultural policy initiative, an International Convention under development at the United Nations Educational Scientific and Cultural Organization (UNESCO) that is designed to reconcile the tension between cultural policy and trade liberalization.

The arguments offered in this essay proceed as follows. Part II will describe how the international trading system treats cultural products, thereby establishing the legal and regulatory framework for assessing policy proposals. It is the necessary starting point, separating what is reasonable and possible from what lies beyond any realistic horizon. Part III argues, against convention wisdom, that media content has little influence on national identity and culture. It reviews the research record into cross-cultural effects, the concepts of "culture" and "national identity," and the empirical evidence for continued Canadian value distinctiveness. This section also argues, however, that promotional cultural policy deserves safeguarding because such policy is concerned with reflecting and expressing domestic constituents in factual and fictional content. Identity, not choice, is the aim of such policy. Part IV evaluates the merits of the International Convention for recognition and functioning in the trading system and the substance of the Convention based upon the conclusions on cross-cultural evidence discussed in the preceding section. Part IV does not have the luxury of designing and proposing a policy in a vacuum; rather, it is bound by a proposal under development since 1999. This section also advances the overall

argument by incorporating the framework of the trading system and judging the substance of the proposed policy against the evidence and arguments for cross-cultural influence. In conclusion, Part V underscores the limits to arguments on cultural influence and speculates on the future trajectory of the International Convention itself as well as on the cultural sector in general for Canada-U.S. trade relations. This essay covers a lot of ground in both ideas and policy, and the reader should keep two of the author's objectives uppermost in mind: (1) to advance understanding on the complicated and vexing question of American entertainment influence on Canadian culture, and (2) to evaluate a specific policy, the proposed UNESCO Convention. Although the Convention appears designed to safeguard a nation's domestic cultural policy space, it is less likely to offer a substantial, consequential impact on cultural trade (or on the capacity of nations to set cultural policy) than to serve as a symbolic token of change.[7]

II. THE TREATMENT OF CULTURAL PRODUCTS IN THE TRADING SYSTEM

This section describes how the established multilateral and regional trading systems, *i.e.*, FTA and NAFTA, treat cultural products, defined to include motion pictures, TV and radio programming, magazines, books, and sound recordings. The central aspect of their treatment is the domestic competitive conditions these items face, entailing conditions of entry, establishment, and internal regulations. Intellectual property rights (IPR), also central, are not addressed because they remain very much a realm unto themselves. The section is arranged chronologically, beginning multilaterally with GATT's 1947 motion-picture screen quota and proceeding to the U.S.-EU (and Canadian) feud over the inclusion of audio-visual (A/V) services at the Uruguay Round in 1994. The section then details the so-called "cultural industries exemption" incorporated in the Canada-U.S. Free Trade Agreement (FTA) in 1989 and subsequently extended into the North American Free Trade Agreement (NAFTA) in 1994. The section concludes with several lessons about the nature of cultural-product treatment by the trading system and highlights implications for current initiatives to reconcile free trade with cultural policy. A comprehensive explanation of the trade system in respect of the cultural sector is a complex task, exceeding available space, which would reflect the competitive and disbursed

nature of decision-making, the two-level negotiations characteristic of international policy, trade patterns and patterns of protection that pre-date the creation of the trading systems, and a host of other factors, including the international political economy, government-industry linkages, the circumstances of domestic industry, changing corporate organization and changing technology, negotiating objectives, and actual trade volumes. Already Patricia Goff underscores the idiosyncratic fit between the cultural sector and the trading system when she points out that none of the standard rationales of industrial policy (balance of payments, job security, optimal tariffs, or even strategic trade policy) sufficiently explain cultural measures.[8]

A. Multilateral Trade Regulation: GATT and the WTO

Cultural products have been discussed at length within the multilateral trading system, first at GATT from 1947 to 1994, and subsequently at the WTO since 1995. This section will focus on explaining the outcomes of particular episodes during the evolution of the system, including the motion-picture screen quota in 1947, the unsuccessful negotiations over TV programming during 1961-63, including its unresolved status as a "good" or a "service", and negotiations over A/V services during the Uruguay Round from 1986 to 1994. Our purpose is to distill lessons from the history of this particular trading system that are applicable to the current initiative to resolve the tension between cultural policy and trade liberalization.

Motion pictures were treated explicitly in the original GATT regulations set up after World War II. Article IV states: "If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements." Four qualifying clauses then specify the terms and conditions. In ordinary language, a screen quota allows a country to reserve a portion of screen time for domestic films. This provision has been described as "exempt[ing] motion pictures from the general principle of nondiscrimination," and "recognizing the specificity of cultural products [films]...without subtracting them from the disciplines of the agreement" (Bernier 109). Any explanation of Article IV must begin with John Jackson's comment that "regulation was more related to domestic cultural policies than to economics and trade."[9]

Quotas and other protectionist measures have been employed by several European countries since the mid-1920s. World War I reversed the American trading position with the original cinema leaders of France, Germany, and Italy. The deleterious effects of World War II on European cinema were even more dramatic because the war decimated the European film industry. By 1945-46, as American films stood poised to flood European cinemas, U.S. negotiators initially pushed for the complete removal of barriers but ultimately relaxed their demands and settled on what appeared *prima facie* to be a protectionist measure allowing screen quotas for national films. Although there were several underlying reasons that influenced the final outcome, the two most important were the American recognition that European exhibitors of Hollywood products, being private and concerned with maximizing profit, would pressure their own governments to relax the quotas; and a countervailing force, especially in France, that sought to protect its own film industry because of a conviction about the cultural properties inherent in cinema and the French desire to return to their earlier glory as the inventor and early leader in cinema. One conclusion about this first episode of cultural trade negotiation is that, of all the various conflicting interests, cultural concerns that heightened political sensitivity played a large role in determining the final outcome of the screen quota.[10]

The next cultural sector development in the multilateral trading system was the Working Party negotiations over TV programming which took place during 1961-63. Trade regulations pertaining to television had been omitted from the original GATT because TV had been in its infancy during the mid-1940s. With the development of the technology itself and the proliferation of worldwide television ownership throughout the 1950s, the U.S. began to consider public ownership of television to be an export barrier. Unlike the situation regarding motion pictures, where a natural incentive existed to obtain popular American movies, the public nature of TV offered no similar incentives to maximize audiences. Consequently, the U.S. maintained that the sector would remain closed unless rules were introduced to govern trade in, and access to, foreign broadcast systems.[11]

The GATT Working Party Report issued in March of 1962 reveals the conflicting views over whether TV programming was either a "good" or a "service" which carried important trade implications. The U.S. argued that internal regulations that affected the use

of imports (on domestic broadcasters) fell within the meaning of the national treatment provisions in Article III:4. They also acknowledged that countries could reserve air time for domestic programming because of television's "importance as a cultural and informational medium." France protested, asserting that TV resembled a "service" more than a "good", a position based on television's existence as signals broadcast over the air on electromagnetic frequencies in contrast to film, which was the imprint of images fixed onto celluloid, a physical medium, that was then carried across borders. Each of the draft positions was contained entirely within square brackets, indicating a lack of consensus. Although the U.S. presented a revised proposal in November, 1962, and again in March, 1964, no consensus was ever reached and hence no final report was adopted. This pre-Kennedy Round negotiation was the first to reveal the challenge of defining cultural products as "goods" or as "services" and the problems of overlap that could result. Forty years later, Christopher Maule noted that the status of TV programming still remained unresolved, with the U.S. considering the products to be "goods" and the Europeans and Canadians as "services."[12] During the Tokyo Round in the 1970s the U.S. complained about film and TV production subsidies but did not launch a formal challenge.

The next substantial development for the multi-lateral treatment of the cultural sector came during the Uruguay Round of 1986-1994, when the idea of a "cultural exception" or "cultural carve-out" took hold. The context of Uruguay Round negotiations over audio-visual services was complicated by the Canada-U.S. free trade negotiations during 1987-88 which achieved a "cultural exemption," and by the European broadcasting quota initiative commonly known as *Television Without Frontiers* (TWF), implemented in 1989. Karl Falkenberg, one of the European negotiators, noted that "[t]he decline of the European audiovisual sector and the success of the U.S. sector are the background for the EU-U.S. battle in the Uruguay Round."[13]

By the December, 1988, mid-term WTO Ministerial, the "cultural exception" was on the negotiating table for audio-visual services. Although the European Commission initially backed away from the Canadian proposal, fearing that it would lead to a cascade of withdrawals from other service sectors, it eventually endorsed it, believing that A/V service liberalization would threaten EU industries more than it had initially thought. The first version contained the

provision written into GATS' Article XIV, General Exceptions, to provide a broad and genuine exception for all A/V from scheduled liberalization. In response to strong U.S. opposition, a revised exception stipulated that only a portion of the A/V sector remain permanently non-negotiable. With the implementation of the TWF angering the U.S., an Audio-Visual Sector Working Group was created in the summer of 1990 to keep the talks on track. Nevertheless, they broke down and did not officially resume again until Sir Leon Brittan, the EU External Affairs Commissioner, replaced "cultural exception" with "cultural specificity" a *quid pro quo* that permanently safeguarded the subsidies portion of the A/V sector for the EU in exchange for scheduling market access commitments for the U.S. Despite coming tantalizingly close, and regardless of last-minute interventions at the highest levels, no compromise was reached by the mid-December deadline. When the Uruguay Round was formally concluded in April of 1994, both the EU and the U.S. claimed victory. In hindsight, though, the fairest interpretation is that the outcome had been a stalemate. Writing later that year, Donald Macdonald captured the spirit well from a Canadian perspective: "Canada played a supporting role to the European community in those negotiations doing its best, to borrow a phrase from our national game, to keep its stick in [USTR Representative] Mr. Kantor's skates, and with some success. At the final siren, Mr. Kantor had to leave the ice without success but muttering threats of 'wait until next time'."[14]

The treatment of culture during the Uruguay Round, and specifically A/V, offers two lessons. First, staff work is crucial. Reflecting on their narrowly missed victory to exempt A/V services, Karl Falkenberg, a European negotiator, noted that the "Community presented its position late in the negotiations," while Eric Morgan De Rivery, another European negotiator, expressed regret over "the inexplicable lack of preparation which characterized the negotiations on both the European and American sides." Given the conceptual complexity and political sensitivity of cultural sector trade, the absence of adequate preparation and staff work is inexcusable. Second, a cultural solution, whether styled as an "exemption," "exception," "specificity," or something new, poses tremendous inherent conceptual challenges. Only a narrow and specific proposal has a chance. Richard Self, U.S. negotiator for GATS, put this in perspective: "What is truly frightening to the U.S. is the idea of a cultural

exception," he said. "To make culture untouchable is to enable people to protect anything because no one has a universal definition of culture. Such general provisions would raise serious problems of legal validity and enforceability."[15]

B. Regional Trade Regulation

While there are scores of other preferential trading agreements, the FTA and NAFTA not only involve Canada and the United States but also encapsulate the challenges of achieving cultural sector recognition multilaterally or hemispherically. This section highlights features of these regional trading systems that are salient for considering the current international policy initiative, now within UNESCO, and it consolidates what has been learned about the cultural sector within trade agreements since the inception of the FTA. Concerns expressed at the beginning over the presumed properties of cultural products as well as market dominance by American entertainment ensured that culture would be an exceptionally sensitive area of bilateral negotiations. Whatever the veracity of claims about cultural loss or threat, the Canadian government under Brian Mulroney had to make certain that the culture issue would be, as the saying went, "off the table."[16]

Subsequently, a "cultural industries exemption" was embedded in Article 2005 of the FTA. The first paragraph stipulated that "Cultural Industries are exempt from the provisions of this Agreement...", and the second goes on to state that "[n]otwithstanding any other provision of the agreement, a party may take measures of equivalent commercial effect...." This is a conditional or retaliatory exemption possessing a definite meaning for specialists but remaining vague and contradictory for general readers. In effect, the article says that Canada is free to implement protectionist policy in the sector as long as it is willing to pay for the revenue lost by foreign commercial enterprises as a direct result of such policy. The exemption "gained very high political prominence during the negotiations" and has been a lightening rod for criticism ever since, although the Article was successful by introducing a basis on which to settle future cultural sector disputes. "Equivalent commercial effect" meant that a hypothetical Canadian film distribution policy that would cost a U.S. firm $200 million in revenue should not expose the government of Canada to more than $200 million in compensation. In theory, the Article replaced the rule of power with the rule of law.[17]

By its mere inclusion the cultural exemption, a triumph of constructive ambiguity in treaty drafting, was judged a success. However, from the perspective of the Canadian cultural sector, the exemption has not been successful. Some fifteen years later, it remains untested, unproven, and therefore unreliable, leading to what one expert aptly described as "the anarchy of the exemption," something of a "Sargasso Sea" in Canada-U.S. trade relations. A plausible reason the United States Trade Representative (USTR) chose to challenge Canadian magazine policy at the WTO in 1996 was to avoid the ambiguity of the FTA exemption. The legacy of the Canada-U.S. FTA for culture, then, has been the *idea* of an exemption, not an exemption in *substance*. With the inclusion of an "exemption" in the FTA, the idea itself gathered momentum, resonating multilaterally, regionally, and hemispherically. The exemption idea established an international precedent which the U.S. had increasing difficulty denying to other countries. During the A/V negotiations of Uruguay, what began as an "inconvenient fact" for American negotiators soon became "infuriat[ing] [when they were] reminded of the Canadian precedent — as when French President Francois Mitterand observed, "We have the right to ask the American government to have the same regard for Europeans as they do for our friends the Canadians" (Truehart).[18]

Attesting to the precedent-setting nature of the exemption, the U.S. pushed very hard to prevent its incorporation into NAFTA. A letter to the Clinton Administration's USTR chief, Carla Hills, stated that "renewing the cultural exemption as part of a NAFTA would do irrevocable harm to the U.S. film, television, and other 'creative industries', " and that they (the RIAA and the MPAA) "cannot afford to send the signal that such an exemption is acceptable to the United States." But the U.S. failed to prevent the incorporation of the exemption. Article 2106 specified that the cultural sector relationship between Canada and the U.S. would continue to be governed "exclusively in accordance" with the pertinent sections of the FTA. Underlying the special bilateral nature of this problem, the NAFTA exemption did not apply between Mexico and the United States. When asked about the issue, the chief Mexican trade negotiator said that it had "little relevance for Mexico" and "represented no cause for concern."[19]

This review has highlighted several features of the trading system for cultural products that in turn will have important implica-

tions for any new policy initiative. Cultural products have received direct treatment in the past, both multilaterally and regionally, and when negotiations did not reach a successful conclusion, cultural issues received serious deliberation. Cultural products and policy invariably pose complex problems of definition and application, such as whether or not TV programming is a good or a service, and if there is overall coherence among agreements (*i.e.*, when the assertion of a right under one agreement might be the negation of a right under another agreement). The political reality underlying cultural sector negotiations requires the symbolic policy embodied in the FTA and NAFTA. Drawing these features together, a pair of insights will help underwrite the forthcoming policy analysis in Part IV. First, the standard trading system itself has already served as the framework for the treatment, and flow, of cultural products. Second, political constraints, as much as the conceptual challenges to be taken up next, should establish modest expectations for reconciling free trade with cultural policy.

III. THE INFLUENCE OF MEDIA CONTENT ON CULTURE AND NATIONAL IDENTITY

This section pivots on one of the essay's organizing questions: *What influence does foreign entertainment have on national identity and culture?* In seeking an answer, we will use two approaches, one "direct" and the other "indirect." The first is to understand what mass communication scholarship has demonstrated about the idea of influence itself, which focuses on the *process* of change. The second is to explore the concepts of "culture" and "national identity" which focus on the *object* of change. Complementing the legal-regulatory foundation of Part II, this section advances the overall argument by adding a philosophical grounding. However, as will become apparent, evidence of "influence" is partial and circumscribed by the epistemological limits of social science, just as the concepts of "culture" and "national identity" are constrained by ontological limits. While it may be intellectually convenient to dismiss such examinations as unanswerable, it is important to recognize that an argument can be advanced, and a defensible position settled on, despite the challenges inherent in the question. Understanding the relationship between culture and cultural products is the question that motivates, and connects, the different approaches included in this section.

A. The Evidence of Media Influence

Mass communication is the natural disciplinary choice for understanding how foreign entertainment, or media content in general, might influence domestic culture because the entire field is *premised* on the notion of influence. "[T]he entire study of mass communication is based on the premise that media have significant effects," Denis McQuail has observed, "yet there is little agreement on the nature and extent of these assumed effects." In general terms, influence is a given. Advertising is based on the notion that one can be influenced to buy this or that kind of car, this or that kind of soap, and vacation at this or that destination. Political campaigns assume that one can be influenced to vote for this or that candidate. And any parent who has ever prevented his or her child from attending a particular movie, or visiting a certain web site, has done so because of their presumed negative influence. Despite its indispensability as a concept, "influence" has proven remarkably difficult to isolate. Establishing precise causality, pinpointing "quanta" that induce change, remains a Holy Grail that is as yet unattained in the field.[20]

The question of cross-cultural influence emerged in the 1960s, associated with studies (and schools) of cultural imperialism, international flows and patterns of information, and cross-border television impact. The best review, by Michel Elasmar and John Hunter (1997), assessed almost 150 studies on the subject. They note that the question of cross-cultural influence has been addressed from two broad perspectives, radical political economy and empirically, that, remarkably, have developed along two strands which, instead of reinforcing each other like a double helix, diverge and remained deaf to one other. Despite the irreconcilable ideologies, four decades has provided an ample research base of evidence and knowledge from which to draw some conclusions.[21]

The radical political economy approach, which grew out of the dependency school of thought within international political economy, produced a cultural imperialism thesis. Herbert Schiller's *Mass Communication and American Empire* (1969) claimed that U.S. entertainment content and infrastructure imposed a Western capitalist organization on the developing world. His thesis, particularly the idea of dominance, elicited increasing criticism throughout the 1970s and 1980s. "In the heart of darkness, which is the image offered by the many views of the adverse consequences of imported television," Michael Tracey opined, "there is a vacuum: an absence of evidence

and good theory." John Tomlinson's critique (1991) was even more devastating because it relentlessly exposed Schiller's central claim as congeries of four distinct discourses rather than a coherent and unified thesis. The essential problem here is that mere consumption of foreign content does not translate into cultural influence. Homogenization of consumption does not mean homogenization of culture. Presence doesn't imply effect. As Cambridge sociologist John B. Thompson writes, "Schiller tries to infer, from an analysis of the social organization of the media industries, what the consequences of media messages are likely to be for the individuals who receive them." The cultural imperialism thesis reduces cognitive, behavioral, and cultural effects to organizational aspects of media, which is some distance from demonstrating individual or societal effects and influences, and fails to demonstrate effects within a sophisticated understanding of culture.[22]

The quantitative studies were often paired-group national comparisons that approximated quasi-natural experiments, because the impact of TV would be measured on a group where it was just introduced over a control group that had watched TV for years. (Such circumstances were easy to find in the 1960s and early 1970s in non-Western countries or, within North America, in rural settings.) Common paired-country comparisons at the time included U.S. and Korea, U.S. and Japan, U.S. and Iceland, and U.S. and Canada. Researchers measured values, attitudes, knowledge, behaviors, and, where possible, tested the direction of influence; that is, the impact of Canadian TV on American audiences in addition to American TV on Canadian audiences. A frequent conclusion was that the presence of U.S. programming increased knowledge of U.S. events in a foreign setting but did not decrease knowledge of domestic events or alter values or attitudes that were identified as local. In simple terms, foreign content had an additive, not subtractive, effect. Most researchers explained this finding by arguing that socialization through several means provided a powerful countervailing context — a constellation of values, beliefs, and attitudes — that serves to deflect or absorb foreign content without changing the individual viewer. At a second level of study, researchers examined the impact of American TV on traditional societies, on Canadian Aboriginal or Inuit peoples and Cook Islanders in the South Pacific, similarly finding that some behaviors were altered by the introduction of TV, only subsequently to re-adjust close to normal over time.[23]

Within mass communication, the rise in the 1970s of so-called active audience studies and reception theory precipitated qualitative ethnographic research. While older assumptions held that meaning was fixed and audiences passively assimilated the message, meaning was now held to be open and audiences actively constructed the message for themselves. In other words, the message was made, not found. *Dallas*, a prime-time U.S. soap opera, become the real-world test. Appearing in 1978, *Dallas* experienced phenomenal export success, broadcast in over 100 countries and engendering a dozen studies. What audiences made of *Dallas* shows was studied in Algeria, Brazil, Canada, Denmark, Germany, Israel, Japan, Morocco, the UK, and the U.S. Together, the studies reveal cross-cultural differences in interpretation rather than influence. In *Export of Meaning* (1990), Tamar Liebes and Elihu Katz show that different groups interpret characters and plots consistently with themes and characteristics dominant in their cultures. For instance, while Americans often read competitive motivations into the story, traditional groups emphasized family concerns as the engine of plots.[24]

This finding replicates those made by an earlier series of investigations into audience interpretation of *All in the Family*, a U.S. program that was popular during the 1970s. Using the concepts and vocabulary of social psychology, researchers demonstrated a striking degree of congruence between audience members and character identification and sympathy. For example, when asked who had won arguments, or who was right, conservative viewers invariably pointed to the conservative and grouchy Archie Bunker, while liberal viewers overwhelmingly identified the more progressive son-in-law, Mike, as victorious. The ethnographic approach employed in the *Dallas* studies focuses on hermeneutics, or how audiences make meaning, and the social psychology approach emphasizes selective cognition; that is, selective exposure (what we choose to watch), selective interpretation (the conclusions we draw), and selective retention (what we remember). That both perspectives independently arrived at the same conclusion points to a common denominator: people see what they want to see. Extending this argument, one might conclude that people see what they're culturally conditioned to see.[25]

Forty years of research into cross-cultural influence offer several conclusions. First, there is no unified theory of media influence or change. As Sonia Livingstone (1996) writes, "The debate about media effects...remains unresolved. This is partly because the debate

is more about the epistemological limitations of social science research than it is about the media in particular." Into this climate of opinion, where *limits* to knowledge and of influence are paramount, we have seen, secondly, that interpretation precedes influence in the cultural studies. Interpretation is shaped by individual and societal forces that by definition vary between societies; among the socializing forces are parents, peers, education, and religion. Evidence shows that it is easier to add to one's knowledge and much more difficult to subtract anything, a process implied by concerns over cross-cultural impact. Furthermore, knowledge and behaviors are more malleable than beliefs, values, and attitudes which serve as a cultural and societal prism that filter foreign entertainment content while not themselves becoming eroded or altered by it. John B. Thompson (1995) underlines this point: "the circulation of information and communication has become increasingly global while at the same time, the process of appropriation remains inherently contextual and hermeneutic." Similarly, Elasmar and Hunter conclude that "at most, foreign TV exposure may have a very weak impact upon audience members."[26]

B. The Concepts of Culture and National Identity

Both "culture" and "national identity" are formidably difficult to define. Rather than present the concepts within an intellectual history which already has been done superbly elsewhere, this subsection considers how they advance or hinder the overall argument by exploring the limits they pose.[27]

A national "culture" must be the outward characteristics and the inward values that distinguish one political community from another. To speak of a national culture automatically implies coherence if not uniformity. A national culture also implies that the nation and state are co-extensive, that one group, usually defined ethnically, fits exactly within one political territory. In an age of pluralistic democracies, this is an increasingly rare condition, assuming it ever existed in the first place. One estimate from 1972 claimed that, even then, at most only 10 percent of countries met the criteria of a homogeneous nation-state. The concept of culture is further undermined by the ontological error of reification: the mistake of inferring the existence of a national culture from the ability to speak about one. The category of "national culture" presumes a knowable and legitimate unit of culture. Once this error is made, a second one quickly

follows, presuming a purity or authenticity from which contemporary culture suffers by comparison. Reification and nostalgia combine to cloud analysis. In straightforward terms, no satisfactory criteria or standards exist against which to measure and conclude that a national culture has or has not changed.[28]

As a premise for an argument, or a postulated object of change, "national identity" is just as challenging as culture. National identity requires the general idea of the nation to be available but also demands particularized history, memory, myths, and symbols to congeal around. "[National identity] depends for its power not just on the general idea of the nation, but on the presence and character of this or that specific nation which it turns into an absolute. Its success, therefore, depends on specific cultural and historical contexts, " Anthony Smith writes. One unavoidable problem is that no satisfactory criteria exists, objective or subjective, for adequately deciding before hand when a nation becomes a nation. For instance, one has a Canadian identity because one has consciousness of belonging. "National identity" suffers from tautology: it is knowable only in terms of itself, only after the fact. Secondly, "national identity" is a type of collective identification experienced individually and thus unevenly throughout the population. One person may have a strong sense of national identity, someone else may be indifferent, and a third may be hostile, unpatriotic, or even treasonous regarding their national identity.[29]

A difference exists between the process of national identity formation and the descriptive content of a particular identity. Convulsive and watershed events such as revolutions, civil wars, wars against foreign enemies, religious conversion, and emancipation galvanize identity, forging a common collective outlook among the other identities people also possess. The more formative the event, the stronger the centripetal force. Charles Tilly captured this in a calculated simplification: "War made the state, and the state made war." While national identity begins by working from difference by identifying what one is not, the more the memories, myths, history, and descriptive content, the deeper the feeling individuals within a country will have of their national identity. It is no coincidence that the United States began referring to itself in the singular after the Civil War (The United States *is*), instead of the *antebellum* plural (The United States *are*), just as it is no coincidence that, given their

respective national histories, the U.S. has a stronger sense of national identity today than does Canada.[30]

Cultural products can serve a role in fostering national identity by disseminating media portrayals of such descriptive content. Differentiating content *by purpose* is crucial. Cultural products also serve concrete and general purposes: to amuse, to distract, to advertise, to entertain, to educate, to inform, to enlighten, and to edify. Though content that entertains (and the vast majority of content simply entertains) by design will not convey descriptive-content building-blocks of a national culture, content designed to educate or inform will instill a sense of national identity. Watching *NYPD Blue* or *Seinfeld* does not contribute to a national culture or sense of identity in any reasonable way, but PBS's *The Civil War* or the CBC's *Canada: A People's History* likely will. Differentiating by purpose is a simple but instructive matter, because content such as news, public-interest, or current-events programming, by virtue of its purpose and specificity to a particular group, has a more important role than the majority of entertainment. This also implies that all genres are not equal and from the perspective of trade agreements deserve to be considered for safeguarding.[31]

One must not sweep too large a swath of content away with too broad a brush, however. Given that people do get a large amount of information from television, it is conceivable that foreign drama may influence how one views one's own society. Several years ago a survey reported that Canadians were confident both in their right to possess firearms and their right not to self-incriminate, despite having recourse to neither the Second nor Fifth Amendment of the U.S. Constitution. While a diet of police and detective drama may not undermine the general attachment one may feel for Canada, such programming might influence one's understanding of a particular part of their culture. This effect, limited and partial though it may be, underwrites part of the argument for ensuring that domestic programming remains available: even entertainment content can and often does reflect a society to itself, educating in the process. The contribution to the overall argument is that some cultural products have legitimacy in their description as cultural.

C. Empirical Evidence for Canadian Cultural Distinctiveness

The well-established research tradition into comparative values, including cross-national surveys that identify the magnitude of

value changes, is a parallel approach to the philosophical exploration of culture. It also allows us to empirically assess the evidence for cultural convergence. This contribution entails searching first for an effect before trying to infer a cause. While there is a logical problem moving from evidence back to cause, the insights gained from this approach derive from a credible assessment of evidence itself. The comparative approach to Canadian-American value difference begins with Seymour Martin Lipset. He hypothesized that national differences were rooted in formative historical events which shaped subsequent value and institutional development down to the present day. He then tried to prove his conclusions with survey data. American character and Canadian identity were then arrayed as abstractions: Americans were, in general terms "classically liberal, anti-statist, individualist, and populist" while Canadians were "deferential to authority, collectively oriented, and statist."[32]

His conclusions have drawn substantial criticism from both quantitative sociologists and historians. Some of the former accused him of practicing a scholarship of convenience, selectively matching data with a prevailing hypothesis in order to preserve his earlier claims, despite reasons to conclude in other directions. Others reviewed the same data only to conclude that his interpretations were sound. Historian Robert Bothwell found his contrast of the two societies to be exaggerated or "somewhat overdrawn;" fellow Canadian scholars Stephen Randall and John Herd Thompson concurred, casting doubt on Lipset's reasons for the differences. The historians' criticism stresses the danger of trying to validate a covering theory of national values and culture by attributing survey results, and empirical data, from one or two watershed events.[33] This intramural squabble remains unresolved.

The World Values Survey, a mammoth cross-national study, became the basis for the next wave of comparative assessment. In *The North American Trajectory*, Ronald Inglehart, Neil Nevitte, and Miguel Basanez found that the broad indices were tracking in a similar way in the United States, Mexico, and Canada, revealing a move toward individual autonomy, material acquisition, and what Inglehart calls "post-industrial" values, a drive toward subjective human concerns for quality of life. Though the surface trajectory may be similar, there are divergent undercurrents, according to Michael Adams in *Fire and Ice* (2003), which shows that for Canada and U.S., differences not only persist, but are increasing. "At the most basic

level — the level of our values, the feelings and beliefs that inform our understanding of and interaction with the world around us," he writes, "Canadians and Americans are markedly different, and are becoming more so." Measured on an axis that revolves around order as its organizing principle, with deference to authority, trust in institutions, and willingness to obey customs, rules, and procedures at a pole labeled "authority," he shows that Canadians and Americans are moving away from these values. However, he also argues that on an axis that revolves around resistance or openness to change, the values of Canadians and Americans are diverging. Americans are leaning more toward what he labels as "exclusion and intensity," emphasizing being admired by others and gaining and displaying material rewards, while Canadians are moving into what he labels "idealism and autonomy," stressing betterment through inner-directed activities such as health, learning, and personal growth. The rate of divergence has accelerated over two recent sampling periods.[34]

If this observed divergence is credible, it strongly refutes the idea that U.S. media has had a cultural influence on Canada. For if Canadian consumption of U.S. media has remained the same for years, Canadian values, a dimension of Canadian culture, have actually diverged. The *cause* for convergence can be ruled out because the effect has not been the one hypothesized. General conclusions should not be based solely on polling data, as there are several methodological pitfalls to opinion research, and one cannot logically rule something out by induction, or reason back from effect to cause. These findings, however, have a strong affinity with the observations of two Canadian journalists. Richard Gwyn reports the flowering of what he has dubbed a "new Canadianism," and Edward Greenspon writes of the "mushrooming national pride" that has flourished in Canada in recent years. Whatever else U.S. entertainment content may be doing to Canadian audiences, it does not appear to be eroding Canadian values or directly threatening Canadian culture.[35]

By broadly examining the relationship between culture and cultural products through various lines of enquiry, the purpose of this section was to settle on a position for the assessment of the current UNESCO policy initiative. The balance of the evidence, research record, philosophical speculation and empirical studies, as well as both the direct and indirect lines of argument, tilts *against* the claims of cross-cultural influence. First, the evidence gathered spe-

cifically under cross-cultural impact research tends to show that values, beliefs, and attitudes (that is, core identity characteristics) remain intact despite foreign media consumption, a finding demonstrated in ethnographic qualitative work as well as in social-psychological quantitative approaches. Second, the philosophical inquiry supported these empirical findings. Third, the empirical approach underlined this by cogently arguing for Canadian cultural distinctiveness. However, it is essential to recognize that just because claims of cultural loss or threat are exaggerated does not mean that cultural products have no legitimacy. The example above, battening on cross-border influence of criminal-justice elements, suggest a modicum of cultural legitimacy. And support for domestic cultural products can be found in unlikely places. "Many individuals value cultural difference for its own sake," Harvard-trained economist Tyler Cowen writes. "Canadians wish to differ from the United States....It is identity they seek, not choice *per se*." And former American trade negotiator Geza Feketekuty has noted that "[t]he United States must recognize that access of local communities to cultural media is even an issue within the United States, where governments at all levels regularly require media companies to set aside channels for local groups and public service programming." Cowen endorses the availability of domestic content, based on identity considerations, while Feketekuty supports specifically news and informative programming. The normative policy position that follows from this argument would be to endorse measures that do not protect or exclude or try to substitute foreign content and at the same time provide for the continued availability of domestic content through accepted promotional means. Such a position recognizes both that people should not be led to watch particular programming — they are sovereign consumers, as the phrase goes — but that aggregate demand, and the herd response by producers to cash in, should not lead to the extension of domestic content.[36]

IV. POLICY ASSESSMENT: A CONVENTION ON CULTURAL DIVERSITY

This section assesses the policy initiative currently under discussion, originally called the International Instrument on Cultural Diversity (IICD) but as of October, 2003, known as the International Convention on the Protection of the Diversity of Cultural Contents

and Artistic Expressions. It would reconcile international trade obligations with cultural policy based upon an assessment by both the criteria of functionality within the trading system and by consistency with the conclusions of the last section on the influence of foreign entertainment on domestic culture. Analysis is complicated since the policy still remains in development at this writing. Hence our perspective is obscured because the policy is neither purely hypothetical nor fully-formed and ratified. Instead of either starting with a clean slate to propose a new policy, or analyzing a policy already in place, we are left with something betwixt and between to evaluate. Our assessment proceeds in four parts: first, to present the historical development; second, to argue that functionality and recognition are preconditions for any attempts to modify the international trade regulation of cultural products; third, to analyze the specific draft text of the International Convention; and fourth, to speculate about the eventual impact of this policy on international trade regulation.

A. Historical Development

Impetus for this policy was the result of forces both within and external to Canada. Within Canada, the overriding force was the dawning realization that the cultural industries exemption in the FTA and NAFTA would not guarantee the Canadian cultural policy space originally sought, a space, in the eyes of the Canadian cultural sector, that would have permitted the evolution of policies to promote Canadian products irrespective of their impact on foreign products. According to Ivan Bernier, "[t]he real issue in the debate on the place of cultural products in international trade agreements is the state's ability to make cultural development policy." The *Canada Periodicals* decision of 1997 decisively contributed to this opinion, and it was no coincidence that the first inter-governmental meeting to discuss culture and trade liberalization was hosted by Ottawa precisely one year after that ruling. By October, 1999, the Government of Canada had concluded that rules-based recognition rather than the older exemption approach should be the way forward.

> Canada should pursue a new international instrument on
> cultural diversity. As described by the SAGIT, the purpose
> of the agreement would be to set out clear ground rules to
> enable Canada and other countries to maintain policies
> that promote their culture while respecting the rules of the

international trading system and ensuring markets for cultural exports.[37]

Outside of Canada, other indicators suggested that the time was auspicious for a new policy. UNESCO drew attention to the idea of "cultural diversity" in the publication, *Our Creative Diversity* (1995), and in *Stockholm Action Plan* (1998), concluding that cultural goods and services should be fully "recognized and treated as being not like other forms of merchandise." In addition, the stalemate over A/Vs at the WTO's Uruguay Round arguably led to a greater willingness to compromise on the part of the U.S. position for audio-visual and related services. In December, 2000, USTR's Audio-visual and Related Services Proposal represented a *quid pro quo* of sectoral liberalization in exchange for guaranteed safeguards on the domestic eligibility for A/V subsidies. The Proposal was "intended to provide a framework for future work in the WTO that will contribute to the continued growth of this sector by ensuring an open and predictable environment that recognizes public concern for the preservation and promotion of cultural values and identity. " Beyond signaling intentions, the proposal explicitly invited a plan to safeguard domestic eligibility for A/V subsidies. In conjunction with negotiated commitments for audio-visual services, "Members may also want to consider developing an understanding on subsidies that will respect each nation's need to foster its cultural identity by creating an environment to nurture local culture." Analysts have noted that the U.S. seemed willing to concede ground on certain measures in return for further general sectoral liberalization, given the stalemate and the few countries that have liberalized the majority of their audio-visual service sector.[38]

The International Network on Cultural Policy (INCP) became the focal point for these forces and events evolving unevenly from the late 1990s to the first years of the new century. As an inter-governmental organization, the INCP has served as the site for discussion of the cultural diversity idea and the policy initiative. It has met annually since 1998, the year the inaugural meeting had been hosted by Ottawa, and membership grew steadily from 19 to 59 countries by October, 2003. The first years had been devoted to articulating the idea of "cultural diversity" and why an international agreement was required to preserve it. In 2001 the Network resolved to develop the IICD and tabled a proposal at the October, 2002, meeting, in Cape Town, South Africa. This meeting was important in another respect:

the path to cultural policy development, implementation, and authority would lead through UNESCO rather than to the World Trade Organization.[39]

Since 2001 developments have accelerated, marked by a subtle divergence of views between France and Canada. The French delegation at the WTO Doha ministerial session held in November, 2001, refused to consider any discussion of culture that included the language "while respecting the rules of the international trading system." This agreement pushed any future evolution of cultural policy outside the WTO, derailing the Canadian government's goal of pursuing WTO rules-based recognition. During the same month the General Conference in UNESCO adopted a Universal Declaration on Cultural Diversity which brings a higher level of visibility and legitimacy to the commitment that "the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods." Almost a year later French President Jacques Chirac called for the development of an "international convention on cultural diversity." Using the term "Convention" rather than "Instrument" camouflaged his attempt to usurp the Canadian lead in order to champion it himself. Subsequently, the policy initiative dedicated to reconciling open trade with domestic cultural policy came to be known either as the "Instrument" or the "Convention" on Cultural Diversity.[40]

Statements by Pierre Pettigrew, then Canada's Minister for International Trade, confirmed the Canadian objective of an international agreement independent of the WTO that respects international trade commitments. According to Pettigrew, the objectives for the Instrument were to respect trade obligations, keep markets open for cultural exports, recognize that cultural products have a greater role in society than other products, and enshrine with legal certainty the ability of governments to pursue a domestic cultural policy. In February, 2003, the INCP met with the director-general of UNESCO, who agreed that the process for elaborating the convention on cultural diversity would be expedited. A second draft of the IICD was presented in July, and in October, both at the INCP annual meetings in Croatia and then at UNESCO, a formal resolution was passed on the need for a resolution on cultural diversity. The title had changed once again, from an "Instrument" to a "Convention" on Cultural Diversity and finally to "International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions"

(hereafter called "The Convention"). The formal drafting, undertaken by an inter-governmental team, is expected to proceed throughout 2004 into 2005. The aim of the INCP and UNESCO is to have a finalized version ready for resolution when the General Conference of UNESCO next convenes during the Fall of 2005.[41]

B. Recognition within the Trading System

The central question, in fact the elemental question, in any cultural policy assessment is whether the initiative should be located within or outside the WTO. This decision pertains directly to the successful functioning of any potential international trade, or trade-related, agreement. But because a choice has already been made to develop a pathway outside the WTO, part of any policy conclusion must rest upon an assessment of the merits and demerits of this choice. All of the commentators advocated an agreement included *within* the WTO. The difference in analysis was between those who argued for immediate attempts to initiate the WTO pathway through the Working Group process, and those who recognized the need for a longer-term strategy of first building a consensus outside the WTO that would eventually be internalized into the world trade body.[42]

The argument in favor of WTO inclusion is straightforward. The world trade body is recognized by 148 countries, including every major trading nation, and this confers a legitimacy and credibility vital to its successful functioning. A WTO-based cultural agreement would automatically benefit from this accepted existence, elevated institutional status, and sound legal standing. Furthermore, advocates maintain, any agreement would avail itself of the procedures, norms, time-lines, and agenda of the WTO as well as the Working Party process to shape such an accord, along with the dispute-settlement body and enforcement and compliance provisions to handle conflicts. Finally, the WTO permits a range of options: in addition to general agreements (GATT), there are sectoral agreements (GATS and Agriculture), specialized bargains (TRIPs and TRIMs), and sectoral annexes (the ABT). A cultural agreement could be tailored to fit any of these models.

The important distinction for the analysts who favor the WTO is between immediate and long-term pursuit of policy goals. Several acknowledge that cultural policies are an exceedingly difficult area to negotiate over, and therefore stress the importance of first building a consensus. Dennis Browne offers an example from the equally

vexing sector of agriculture, arguing that a consensus was established and legitimized at the Organisation for Economic Cooperation and Development (OECD) between 1982-1986 before the Agreement on Agriculture was included within the Uruguay Round. Daniel Schwanen pushes the argument in a different direction, stating that interpretative codes have functioned as a bridge or served as the midway point between a consensus for action and an ultimate agreement or understanding. "Mutually agreed codes of interpretation," he writes, "[have] effectively direct[ed] how dispute settlement panels should interpret trade agreements in specific circumstances." Gilbert Gagné endorses using both the INCP and UNESCO as consensus-building organizations that could be used to take cultural policy issues to the WTO.[43]

Ideally, for all the previously suggested institutional, practical, and theoretical reasons, an agreement on cultural products should be located in the WTO accord. This rationale is consistent with the first lesson drawn from this essay's review of the trading system in Part II. After all, the existing multilateral trading system already has succeeded in treating cultural products like motion pictures that are distinct from other trade goods. Admittedly, it has had more limited success in regulating commerce in TV/radio programming and A/V services. While such achievements remain insufficient for one to make a reliable prediction about the results of forthcoming Instrument or Convention negotiations, the serious consideration that cultural products have already received under the existing international trading system certainly suggests that it still might be possible to reach an agreement at the WTO on other cultural products. However, the future emergence of a WTO pathway will hinge upon the rationale designed to promote it and the specific chain events leading up to its deliberation. As Part II suggests, competent staff work will be crucial to its success. If the standard trading system is to be given preference, a long, tedious negotiating process from consensus-building to the implementation of changes in the WTO will be necessary. But this route may well forge a broad and solid international consensus that in any case will be a necessary precondition to the adoption of any global policy on cultural products that could be endorsed by the United States. Despite being difficult to achieve, such a universal concord would remove any uncertainties arising from having two different regimes, UNESCO and the WTO, competing with each other over the regulation of cultural sector

trade. Regulatory competition fosters competing claims for authority and conflicting sectoral expectations will probably undermine the effectiveness of any trade-related agreement outside the jurisdiction of the WTO.

C. An Examination of the Convention Draft Text

After a general analysis of location and functionality, this section dissects the principal draft text under consideration, the Convention. Its first Chapter, containing three articles, outlines the overall objectives of the treaty. These include "the right of States to maintain or adopt" cultural policy and measures that the document should both "serve as a frame of reference" for achieving cultural diversity, and, more importantly, "provide a basis for the promotion of the principles of this Convention in other international fora, including international trade fora." The declaration asserting the right of states to maintain a cultural policy space has been articulated by others. "[P]romoting [these] principles...in international trade fora" is also significant because it means that cultural diversity principles should be considered in discussions, trade negotiations, and disputes involving the cultural sector. Thereby, the Convention's opening Chapter hints at norm-setting and explicitly mentions institutional influence.[44]

Chapters 2 and 3 detail the relationship of the proposed Convention to other treaties and guiding principles. Article IV in Chapter 2 establishes that the relationship of this Convention to other treaties shall be governed by the Vienna Convention for the rules of successive treaties and for treaties with overlapping ambits. By so doing, Article IV assures signatories to other treaties that signatories to this Convention will not derogate or prejudice obligations contained elsewhere. This Article also explicitly mentions that no other treaties directly cover cultural diversity, of which coverage is only by general, and sometimes indirect, application. Articles V through VII (in Chapter 4) are essential for understanding the object and purpose of the Convention. Article V reiterates "the specificity of cultural goods and services," and Article VI, while not explicitly listing acceptable or unacceptable cultural policy measures, nevertheless asserts that acceptable types of support include financial, fiscal, legal, and regulatory measures. Article VI, then, serves as a frame for cultural policy formulation. Article VII requires that a balance be achieved between maintaining a domestic cultural policy and retaining openness to

foreign cultural products. Finally, Article VIII is crucial because it gives Article VII effective meaning. Article VIII "guarantees that domestic cultural policy measures cannot be used in a manner that would be inconsistent with the basic objective of promoting cultural diversity by way of facilitating the availability of cultural goods and services from other Parties in the territory of a Party." In other words, cultural policy cannot prohibit or discriminate against foreign entertainment.[45]

These Articles, providing a policy frame rather than policy substance, are consistent with the broad conclusions of foreign-entertainment influence. Part III concluded that influence was minimal, not zero, and not knowable in its entirety. More importantly, one cannot disqualify the legitimacy of domestic content on the basis of cultural contributions because of the conclusions of close-to-zero cross-cultural influence. This is consistent with the principles and policy prescribed by the Convention, yet is also consistent with the absence of evidence for negative impact when consuming foreign media when expressed as the feature of keeping markets open for cultural export. From the normative perspective of policy congruence with research evidence, the proposed Convention should be judged successful. It will ultimately be a success if it crosses the gulf from a declaratory to a legal existence and thereby confers predictability and stability to a contentious trade sector.

Finally, the dispute-settlement provision is found in Article XVIII, containing four paragraphs that are remarkably thin in comparison both to the entire Convention draft and to other dispute-settlement provisions. In the event of a dispute, parties shall consult among themselves and those that are not satisfactorily resolved will be referred for determination to a third party and adjudicated by a panel of cultural experts. The attention given to dispute settlement, in contrast to the detailed Dispute Settlement Understanding annex of the WTO, emphatically suggests a conciliatory role for disputes between members. Procedures, time-lines, standards of evidence and criteria for determinations are absences that make adjudication close to impossible. In the following section, two conflict scenarios will be envisioned, one where both parties are signatories to the Convention (and thus where the dispute settlement would function internally within the Convention), and one where one party is not a signatory and, more importantly, when the forum for resolution would not take place under the Convention.[46]

D. Symbolic Tokenism?

The most vital issue concerns the future relationship between two regimes that will regulate international trade for the cultural sector, UNESCO's Convention and the WTO. As already mentioned, this will entail competing claims for authority, the introduction of uncertainty into the cultural policy sector, altered expectations on the part of the industry, and problems when conflicts arise. If there are two regimes, there will be at least two main conflict scenarios. The first scenario will unfold in a dispute between members, hence an internal squabble that ought to be a relatively easy problem to address. So long as members recognize the legitimacy of, and honor their obligation to, the Convention, it is reasonable to argue by analogy that if recognition and the commitment to the organization ensure the functioning for the WTO, then the commitment by its members to the Convention would likewise ensure the *success* of the that an agreement as well. It is commitment and recognition that ensure the binding and enforceable nature of an international dispute-settlement system. Upon determination, would the loser agree to the terms and be willing to burden domestic industry with the material loss? Arguing again by analogy to the WTO, the U.S., the most powerful member of the system, has imposed most rulings upon its domestic constituents, a factor underlines the quasi-judicial nature of trade regulation.[47]

The second scenario would occur when the challenge is between a member of the Convention and a non-member, or between two members when a forum other than UNESCO is chosen. Throughout the preliminary drafting of the Convention text, commentators have argued over the merits of this or that dispute-settlement procedure. But the real issue isn't the technical or institutional configuration of dispute-settlement. The true test comes when the U.S. decides to challenge a Canadian cultural policy, or policy of another Convention signatory, before the WTO. This scenario presents an extraordinary challenge for the Convention, because the choice of dispute-settlement forum is the luxury for the complaining party. The increased number of forums from which to choose gives more leverage to the country that launches a challenge. (It is likely that the USTR chose the WTO as the venue to pursue its 1996 challenge of Canadian magazine policy in part because of aforementioned ambiguity over the NAFTA cultural industries exemption.) Even were the U.S. to sign the Convention, nothing prevents it from pursuing its grievance

through the WTO. Since this right of choice cannot be constrained, we must ask what the reasonable goal of the Convention might be. Will the Convention work or be reduced to symbolic tokenism? We need further to assume that the policy community responsible for development was aware of this possibility and that it intended to design an effective, functioning policy.

Norm-setting and institutional influence are postulated as a two-part mechanism for achieving effectiveness. In addition to the above-noted Article II objectives that described the goal of promoting cultural diversity in other international *fora* (including trade *fora)*, a document entitled "The Relationship Between a Convention on Cultural Diversity and International Trade Rules" noted four times that the Convention would serve as a "point of reference" in order to "contribute to coherence" between itself and "other international agreements, including the WTO." The norm will enter into existence by virtue of the number of countries — 59 and counting — that ratify the Convention. The norm will be thickened and improved to the extent the final draft declares specific policy measures to be acceptable. Two variations of institutional influence would follow. First, a consensus strong enough to bring the Convention into existence could convince the U.S. that the cultural sector (probably only a portion of the sector such as A/Vs) should be elaborated within the WTO. In other words, a consensus from outside would be brought inside the WTO. Second, the influence may affect potential future cultural sector dispute settlements. Here, a dispute settlement decision rendered in the Convention could help widen the criteria for dispute-settlement at the WTO. The original GATT system in place from 1947 to 1994 rendered decisions that were non-binding and unenforceable, yet these cases served as important precedents, establishing early jurisprudence for the WTO system after its binding and enforceable nature had been conferred. Inside of a developmental pathway from GATT to the WTO, this pathway would be one from outside to inside the WTO, from a non-trade agreement to the trading system. Unfortunately, this mechanism of influence will probably be far-fetched. "[I]t is doubtful...whether the DSB would exercise a degree of deference to cultural policy measures when applying WTO trade rules," Mary Footer and Christoph Graber note. More generally, there is no meaningful relationship in practice between NAFTA and its side agreements on the environment and labor. If these agreements exert little or no influence on NAFTA dispute resolution,

despite the fact they are recognized, there is only a remote possibility for dispute-settlement influence to cross the gulf from the Convention to a WTO case.[48]

Postulating these aims, and how they might technically be achieved, requires an extension of analysis to ask *will* they work. Should much hope be held out that they will bring about change? Changing norms and influence are notoriously difficult to track precisely, to isolate or identify as the *cause* in a hypothesized cause-and-effect sequence, yet they remain intangible but real. Whether this postulated two-part equation works depends on a consensus for discussion and a consensus for action. There has been ample precedent in agriculture and trade policy remedies, but whether this agreement on cultural diversity crosses the threshold into a meaningful existence depends, ultimately, on the capacity building and staff work accomplished by Canada and others, and whether the U.S. decides that the issue requires improvement. It is not possible to overstate the importance of *recognition* as the key to success of any international policy. Ultimately, success depends entirely on all the major countries viewing the issue as worthy of addressing. While the U.S. would categorically not agree to a diminution of its international market access, there are indications that it would agree to measures which enhance the predictability of the sector. Earlier I argued that the U.S. Audiovisual Services Proposal in 2000 represented a *quid pro quo* of sectoral liberalization in exchange for guaranteed safeguards on the domestic eligibility for A/V subsidies. The key to success would be a narrow and specific sectoral improvement. If the Convention becomes a catalyst that builds consensus, then it may generate results at the WTO and bring about improved clarity and predictability for A/Vs.[49]

Extending the examination of context, the last level of analysis remains political. The most strenuous challenge faced by this policy initiative is the relationship between itself, as a non-trade agreement, and the trade agreements administered by the WTO, a connection that the architects of the Convention believe will change over time. Predictions are risky, because there is evidence for and against any long-term connection. On the negative side, culture and cultural policy appear to be at the edge of invisibility, the vanishing point on the policy horizon, for the so-called "trade and" issues. In her commentary on the "'Trade And...' Conundrum," Debra Steger noted several subjects in connection with trade, including environ-

ment, labor rights, public health, human rights, IP, competition, and investment, but omitted culture. Likewise, Sylvia Ostry has stated that Canada is unique in connecting culture with trade, a relatively isolated position that does not augur well for a consensus sufficiently wide to foster system reform. This singularity, as well, goes a substantial way to explain why UNESCO was the forum of choice for Convention development rather than the WTO.[50]

On the positive side, Canada and France, by building capacity through the INCP, have successfully championed the issue. A specific draft text has emerged, was subject to an important resolution by UNESCO in the fall of 2003, and is now on the agenda. A policy outcome would appear to be guaranteed, and any outcome at all will invite speculation over whether it will be ratified by domestic governments rather than whether or not it will be substantial or symbolic, recognized or marginal. And the American re-entry into UNESCO, after an almost two-decade-long absence, is interesting. The U.S. will now participate in policy development despite not having taken part in the five-year-long discussion that shaped the preliminary Convention draft. These observations run contrary to one another, but after balancing, lead me to reiterate that while a policy outcome is likely, it could well be that such a policy is only hortatory and symbolic in character.[51]

Two sections earlier, a strong case was presented for pursuing a policy solution to the vexing cultural trade issue inside the WTO, yet the discussants chose to locate the Convention inside UNESCO, a decision that needs to be explained. UNESCO was chosen for at least two compelling reasons, one structural and one normative. The first reflects both the composition and and the differing interests in the EU. In 2003 the EU contained fifteen member states that differ considerably over whether they are net exporters or importers of cultural products, and whether in general terms, they consider outside cultural influence benignly or as a threat. Portugal, Spain, Italy, and France have traditionally employed protectionist cultural policies, underwritten by a concern for the preservation of their national cultures and traditions. This concern has translated, in the words of Danish Ambassador to Canada, Svend Roed Nielsen, into a "sound skepticism" over the flourishing, perhaps even survival, of their national cultures. On the other hand, Germany and the Netherlands are home to entertainment firms with significant income from exports. Though they may have generalized concerns about preserv-

ing their traditions, the German and Dutch governments should not be expected to favor an exemption-style Convention. As William Dymond and Michael Hart stress, "It is delusional to base any position on the prospect [of Instrument development] that the U.S. or other major trading countries, such as Germany or the UK, will accept any dilution of the international trade rules to the disadvantage of their industries." Neighboring EU countries, due to their different industry profiles, have different negotiating positions. It becomes, therefore, structurally impossible to reconcile these positions into the single, unified position the EU must speak with, through the European Commission, at the WTO.[52]

The normative reason for choosing UNESCO is the nature of the policy community responsible for Convention development. The policy, or epistemic, community is broad, encompassing academics, industry experts, senior civil servants, retired diplomats, and trade-policy and cultural-policy specialists, although the INCP as the centralized group responsible for policy development contains a concentration favoring cultural policy. The composition of the INCP predisposes them (and this is their norm) away from a solution that might curtail the future creation and exercise of cultural policy. The compass-heading of the norm is well illustrated in Canada, even though the Convention has been developed inter-governmentally. The process is mandated to proceed collaboratively under both DFAIT and PCH, though PCH has assumed the driver's seat as a result of cultural policy falling within their natural scope of responsibility. The compass heading for Convention development between 1999 and 2003, to work outside of the WTO, is entirely consistent with cultural policy specialists taking the lead. Another reason, mentioned above, reinforces the path outside of the WTO. Sylvia Ostry noted that Canada was unique in viewing culture as a sector for micro-management with its trade policy, and the comments attributed to the Mexican lead negotiator for NAFTA strongly echo this point. Consequently, there is not enough consensus among countries to place the cultural sector high enough on the agenda of the WTO, an institution already beset by many high-priority demands, and highly demanding members who do not see cultural sector trade as a problem, or simply do not understand the issue in the first place.[53]

With UNESCO chosen, and with the sector waiting the draft text, two points deserve emphasis. First, the reality of two regimes for cultural sector trade poses problems by introducing greater uncer-

tainty, especially if the industry believes the Convention will safeguard imprudent policy development. William Dymond and Michael Hart suggest that such a development "...would make the present unstable situation even more volatile by subjecting the industries in adhering countries to different and competing sets of trade rules." A UNESCO Convention might encourage cultural policy development under the illusion that it will be exempt from trade agreements, although in reality it ultimately could be challenged before the WTO. Such an outcome would create an eerie *déjà vu* because it was a position the cultural trade sector found itself in after the Canada-U.S. FTA had been implemented. Two regimes, with competing rules and obligations, would be a step *backward* for the regulation of this trade sector. Second, any Convention adopted by UNESCO in 2005 or beyond will likely remain symbolic or declaratory in character. Symbolic policy is not a disappointment *per se*, but only when stakeholders expect a substantial outcome. And in looking for a light at the end of a tunnel, even a symbolic policy ultimately might provide a basis for a consensus that could influence, in a small way, future sectoral or sub-sectoral negotiations at the WTO. Over the longer term, then, symbolic policy could have a modestly substantive outcome.[54]

V. CONCLUSION

This essay examines the relationship between culture and cultural products, having promised to avoid arguments by assertion and an appeal to abstractions, neither of which can be satisfactorily proven or refuted. Although the conclusion of cross-cultural influence might appear intuitive, scrutiny of the evidence and arguments leads to a conclusion of minimal or non-meaningful change (*i.e.*, imparting a hair-style, a figure of speech, or sparking a trend). Media content does conceivably possess the ability to cultivate tastes and morals, and shape the opinion and self-image of a people, but the claims of it defining and consolidating a nation are too great to sustain. Nations exist because of myriad factors, forces, and institutions, and cultural products may be necessary but are certainly insufficient to ensure the viability of a country. More importantly, the necessity of cultural products for national preservation is itself an assertion that cannot be proved or disproved.

Though the claims of cross-cultural influence, loss, and threat are typically exaggerated, one cannot conclude that cultural prod-

ucts do not possess any legitimacy in reflecting a society to itself, informing and educating in the process. Critics like to pose the pointed question: What *exactly* is cultural about a certain movie, TV program, or magazine? This is the problem of knowing beforehand whether something is Canadian, or American, or African-American by virtue of some independent and inalienable standard that establishes such an essence or attribute. And it is impossible to answer. Since it is impossible to answer, the burden of proof falls back upon Canada: How can Canadians pretend to support something they cannot satisfactorily define? David Biette exposes the paradox succinctly when he said that "[p]eople look at Celine Dion and say she's Canadian, [but] is what she does Canadian?" Does this mean that her content would be Canadian if she sang about hockey, but not if she sang about baseball or something indifferent or neutral to national values as when she sang about love for the soundtrack of the *Titanic* movie? By conflating culture with nationality and arguing the point to an extreme, we see how the subjectivity of content proves the impossibility of an independent, inalienable, and pre-determined standard to answer questions of what exactly is Canadian about this or that content. This straw man poses the same problem for American entertainers. Should the music of Bob Dylan, or Rage Against the Machine, or Michael Moore's books lead to disqualification of their content as American because of the vitriol expressed toward their own country? The only reasonable position to adopt is to recognize that content is Canadian by virtue of nationality, though to realize that some content will be more identifiable or self-consciously Canadian than others.[55]

At a point when the argument threatens to become a philosophical tangle of logic, we need to remember that current U.S. market dominance, in addition to the legitimacy of cultural products, forms my argument for supporting content. Overwhelming U.S. dominance of this sector has long engendered the need to set a cultural policy, and safeguarding the ability of a state to continue to set such policy, and the availability of the resulting content, bolster my position that cultural policy should simultaneously ensure that domestic competitive conditions remain open to foreign entertainment while ensuring that domestic content be produced and available. The Convention may ultimately achieve this goal by enshrining such a right internationally among sixty or seventy countries, though it is just as likely that the right to subsidize or maintain a public

broadcasting system remains beyond the reach of trade liberalization.

Canada-U.S. cultural sector trade relations have been quiet since the negotiated settlement to the magazine dispute in June, 1999. Along with others, I contend that this is an uncomfortable silence. Technological evolution, corporate re-organization and quest for market access, Canadian political change, and continental commercial reality will combine to increase the pressure on this sector. The Canadian market, referred to as the "candy store" by virtue of both its proximity for American firms and the avid Canadian appetite for U.S. entertainment, contains untapped potential that is reflected in the large number of barriers identified by the USTR's *National Trade Estimate*. Readers should watch for American attempts to gain Canadian market access, and then see how the Government of Canada responds. If Ottawa enacts legislation that alters competitive conditions so as to target a particular firm, and if such a law results in what trade lawyers call "material injury", there undoubtedly will be a trade dispute between the two North American nations.[56]

The case of the on-line book-retailer Amazon.com's entry into the Canadian market in June of 2002 provides a concrete example of these pressures. Amazon.ca violated the spirit, but not the letter, of Canadian book-publishing policy prohibiting majority foreign ownership in the sector. Because Amazon.ca existed only virtually, it had neither the street address nor employees to satisfy two of three criteria required to establish foreign ownership and thus trip the Canadian investment review process. (Warehousing and customer delivery aspects were handled through contractual arrangements with book distributors and Canada Post.) The Department of Canadian Heritage, with prerogative to review investments for the cultural sector, wisely determined a month later that none was warranted. Predictably, loud cries of cultural loss came from those most directly affected, the Canadian book-selling superstore, Chapters-Indigo, as well as book retailers in general. In late 2002 the Canadian Booksellers Association (CBA) launched a legal challenge, asking the Federal Court of Canada to overturn the Heritage Department's ruling. The case has yet to be heard. Due to the principle of non-interference between the legislative and judiciary, it is unlikely that the court will find in favor of the booksellers. The decision for non-review was intelligent and reflected departmental learning which may or may not transfer to the Martin Government's Heritage

Ministry. And the establishment of Amazon.ca illustrates the pressure that new technology places on older legislation.[57]

The new Canadian government led by Paul Martin will figure prominently in shaping U.S.-Canada bilateral cultural sector trade relations. Factors to watch are the Martin government's overall devotion to culture, the government's surplus over the next few years, the possibility that the Department of Canadian Heritage will be dissolved with individual directorates folded into other departments and agencies, or, assuming that Canadian Heritage remains, the personality of the new Minister of Canadian Heritage, Hélène Chalifour Scherrer (or her successor, if Ms. Scherrer is replaced after the next election). However one may feel toward Sheila Copps (and opinion does run a wide gamut), there is no denying that she punched above her weight in cabinet decisions and, more importantly, afforded Jean Chretien a legacy as a champion of Canadian culture. A true-believer who could be doggedly determined and occasionally truculent, Ms. Copps was so dominating as minister that many people forget there had been another before her arrival in January, 1996. Posterity will view Jean Chretien as a patron of the arts and culture in Canada, but only because of the largesse bestowed on the sector during his third term. The C$560 million allocation, under the title *Tomorrow Starts Today*, announced on May 2nd, 2001 was the single largest increase for the sector since the allocations resulting from the Massey Commission fifty years earlier. Compared to a prime minister wishing to distinguish himself as cultural benefactor, and a heritage minister willing to serve the politically expedient role of a cultural pit bulldog, it is unlikely that Paul Martin and the minister responsible for culture will indulge the Canadian sector at similar levels. With all this as well as some of the Canadian cultural commercial and critical successes in mind, future commentators may view the 1990s as a golden age for Canadian culture.[58]

A solution for the tension between cultural policy and trade liberalization is extraordinarily unlikely to be permanent and satisfactory, whether considered generally at the multilateral level or specifically, for Canada-U.S. relations. The UNESCO Convention, likely to be adopted by 2005, may be symbolic tokenism, helpful but not profound in re-organizing the pattern of trade in cultural products or in carving out a space for protectionism or import substitution. The American cultural presence casts a long shadow in Canada, and Canadian success in the sector, no matter how numerous or how

large, will never eliminate the feeling of this threat or the need to assert distinctiveness. This existential condition will block progress at the level of ideas over cultural influence (neither side will ever convince the other of its claims), and in parallel, an impasse is likely to remain at the level of trade agreements and negotiated solutions because the two sides are just too far apart. Rather, success should be measured by the relative absence of cultural issues that in any case will be carefully monitored by cultural and trade-policy specialists on both sides of the Canadian-American border.

ACRONYMS

ABT	Agreement on Basic Telecommunications
A/V	Audio/Visual
CBA	Canadian Booksellers Association
DFAIT	[Canada] Department of Foreign Affairs & International Trade
EU	European Union
FTA	[Canada-U.S.] Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IACD	International Agreement on Cultural Diversity
IICD	International Instrument on Cultural Diversity
INCP	International Network on Cultural Policy
IPR	Intellectual Property Rights
MPAA	Motion Picture Association of America
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Co-Operation and Development
PTA	Preferential Trade Agreement
RIAA	Recording Industry Association of America
SAGIT	Sectoral Advisory Group on International Trade
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights
TWF	Television Without Frontiers
UNESCO	United Nations Education, Scientific, and Cultural Organization
USTR	United States Trade Representative
WTO	World Trade Organization

NOTES

[1] Dominant U.S. Culture Worries Canadians, poll shows" *Globe and Mail*, 1 July 2002: A6, 2-5. Art Eggleton's speech quoted from Notes for an Address by the Honourable Art Eggleton, Minister for International Trade, on the Occasion of a Panel Discussion entitled "Can Canada Maintain its Cultural Identity in the Face of Globalization?"

[2] See Allan Smith (1990) "Canadian Culture, the Canadian State, and the New Continentalism" *Canadian-American Public Policy* (October, 3), Orono: ME. for description of early national Canadian concern and its historical development. John C. Weaver (1973) *Imperilled Dreams: Canadian Opposition to American Empire, 1918-1930*, unpublished Ph.D. dissertation provides detail for this concern in the 1920s. John K. Galbraith quote from Richard Bowles (1973) *Canada and the U.S.: Continental Partners or Wary Neighbours?* Scarborough, ON.: Prentice Hall, p. 89. The Massey Commission asserted the connection by analogy: by reporting concern in the 1920s over cultural annexation without a national public radio broadcaster as surely as economic and political annexation would have followed absorption into the U.S. rail system without a Canadian transcontinental line, *Report on the Royal Commission on National Development in the Arts, Sciences, and Letters*, Ottawa: King's Printer (24-25). Quote from Caplan-Sauvageau comes from Richard Collins (1990) *Culture, Communication, and National Identity: The Case of Canadian Television*, Toronto, ON: U Toronto P, p. *i*.

[3] The different terms, "cultural sector" or "entertainment," and their political ramifications, are frequently commented on. Two of the better discussions can be found in Rebecca Goldfarb (1998) "The Conflict of Two Realities and Two Views: A Comparative Assessment of the Canadian and American Film Industries" Department of Foreign Affairs and International Trade Reference Document #5; and Joyce Zemans (1994) " 'And the Lion Shall Lie Down with the Lamb': U.S.-Canada Cultural Relations in a Free Trade Environment" *American Review of Canadian Studies* (24, Winter), 509-536. An excellent discussion, from an American perspective, can be found in Peter Karl Kresl (1989) "Your Soul for a Case of Coors? Canada-U.S. Free Trade and Canadian Cultural Policy" in Peter K. Kresl, ed. *Seen From the South* (pp. 159-192), Provo, UT.: Brigham Young University.

[4] Mary Vipond (1977) "Canadian Nationalism and the Plight of Canadian Magazines in the 1920s" *Canadian Historical Review* 58(4), 43-63.

See John Weaver (1973), op cit. note #2, as the source for Canadian-American allotment of radio frequencies. For an overview of Canadian-American market share in different sectors, see Victor Rabinovitch (1999) "Method and Success in Canada's Cultural Policies" *Queen's Quarterly*, 106(2), 217-231. The reasons for U.S. entertainment ascendency in Canada need to be explained by structural factors, because this condition can not be explained, as typically assumed, as a result of a solely inferior Canadian product. Though sectors vary, common reasons for U.S. dominance are (1) early investment, (2) larger domestic market, (3) migration of talent, (4) for motion pictures, integration by the early 1920s of the Canadian with American distribution system, so that Canada was considered part of the U.S. "domestic market," (5) the Canadian population concentrated along the U.S. border, which placed Canadian audiences within range of northern American radio and then television broadcasters, and (6) with the important exception of Quebec, English as a common language.

[5] John Herd Thompson and Stephen J. Randall (2002) *Canada and the United States: Ambivalent Allies*, 3rd ed., Athens, GA.: U Georgia P, pp. 299-300, 487; Christopher Sands (2001) "A Chance to End Cultural Trade Conflict Between Canada and the United States" *American Review of Canadian Studies*, 31(3), 483-500. Album sales from *Time Canada* (9 August 1999) "Canada 2005", pp. 49-57 and the Munro-Chekov comparison from Mona Simpson (2001) "A Quiet Genius" *Atlantic Monthly* (December), 126-136. Praise for Munro seems only to grow: "Alice Munro is the living writer most likely to be read in a hundred years" (Simpson 126). Paul R. Krugman (1999) "Enemies of the WTO: Bogus Arguments against the World Trade Organization" *Slate Magazine*, available on-line at slate.com.

[6] Description as "quandary" comes from Dennis Browne, ed. (1998) *The Culture/Trade Quandary*, Ottawa, ON.: Centre for Trade Policy and Law; as "paradox" from William Dymond and Michael Hart (2002) "Abundant Paradox: The Trade and Culture Debate" *Canadian Foreign Policy*, 9(2), 15-34; as "contentious and intractable" from William Merkin (1999) "U.S. Trade Policy and Canadian Culture: What Can Be Accomplished Through Trade Negotiation?" Working Paper presented at Workshop on U.S. Trade Strategy and Canadian Culture, sponsored by the Center for Strategic and International Studies (CSIS), in Washington, DC, April 23, p. 1. Sources for quotations are Roger Frank Swanson (1977) "Canadian Cultural Nationalism and the U.S. Public Interest" in Janice L. Murray, ed., *Canadian Cultural Nationalism* (pp. 55-82), New

York: NYUP; and Ivan Bernier (2000) "The World Trading System and Culture: Looking at the Problem from a Cultural Perspective" Speech made at New York University, March 3, 2000, p. 3; and Dennis Browne (1999) "Canada's Cultural Trade Quandary: How Do We Resolve the Impasse?" *International Journal*, 53 (Summer), 363-374.

[7] A paragraph that outlines the argument deserves a brief statement of the author's point of view, which is self-described as *informed disinterest*. In contrast to the majority of the literature, which is written from a perspective of sympathy or antagonism, which strongly conditions the arguments and eventual conclusions, I have tried to conclude only what a disinterested examination of the evidence will reasonably allow and suspend as much as possible the tendency to veer to one side or the other. As such, I hope this article avoids the common problem of re-iteration, re-statement, and what simply amounts to cheerleading for one side or the other. Furthermore, the research record is mass communication, which is the natural perspective to adopt if one wishes to understand the extent of cross-cultural influence or effect because the entire field is premised on the idea of influence and effect. Articles from the perspectives of international relations, trade policy, and economics have much to contribute but are of secondary importance from the perspective of influence, narrowly considered. Articles from an orthodox economic perspectives are most common, and their line of reasoning battens on several features of entertainment content that make them idiosyncratic for neo-classical axioms: that content is (a) a quasi-public good because they are not rivalrous and (b) production costs are not incremental or marginal, but are incurred almost entirely in producing the first copy of a movie or book. An excellent overview of this rationale can be found in Colin Hoskins, Rolf Mirus, and W. Rozeboom (1989) "U.S. Television Programs in the International Market: Unfair Pricing?" *Journal of Communication*, 39(2), 55-77. Another excellent discussion is in Keith Acheson and Christopher Maule (1999) *Much Ado About Culture*, Ann Arbor, MI.: U Michigan P, particularly chapter six, "The Economic Characteristics of the Cultural Industries and Their Organizational Implications" (pp. 92-116).

[8] Christopher Maule (2002) "Overview of Trade and Culture" *Canadian Foreign Policy* (9, Winter), 1-14 for the separation of IPR as a distinct area. IPR encompasses ownership rights, payment received for that ownership, and leasing rights. With respect to the detail required to provide a sound explanation for a given sector, trade round, or issue, readers are encouraged to track down the relevant sources contained in

the endnotes. For a more thorough single-source account, readers may wish to request the 14,000-word chapter of my thesis, which is the basis for the distillation presented here. Patricia Goff (2000) "Invisible Borders: Economic Liberalization and National Identity" *International Studies Quarterly*, 44(4), 533-562.

[9] W. Ming Shao (1995) "Is There No Business Like Show Business?" *Yale Journal of International Law*, 20, 105-150; Ivan Bernier (1998) "Cultural Goods and Services in International Trade Law" in Dennis Browne, ed. *The Culture/Trade Quandary* (pp. 108-154), Ottawa, ON.: CTPL; and John Jackson (1969) *World Trade and the Law of GATT*, Charlottesville, VA.p. 293: Michie P, which is considered *the* book that established the field of international trade regulation within public international law. For those who prefer a more detailed description of Article IV, Jon Filipek (1992) "'Cultural Quotas': The Trade Controversy Over the European Community's Broadcasting Directive" *Stanford Journal of International Law*, 28, 324-370 describes it as "an *express* exception to the basic rule of national treatment set forth in Article III...and an *implicit* exception to Article XI's prohibition on the use of quotas" (339).

[10] The international political economy of cinema until World War II is found in Kristin Thompson (1985) *Exporting Entertainment: America in the World Film Market, 1907-1934*, London: British Film Institute (BFI). W. Ming Shao (1995), op cit. note #9, pp. 111-12 and Keith Acheson and Christopher Maule (1998) "International Agreements and the Cultural Industries" *North American Outlook*, 6(4), 7-24 for reasons that shaped Article IV negotiations, including European country's having scarce U.S. currency, which was required to pay box-office remittances. Readers wishing detail on the colorful Franco-American cinema dispute should begin with Jean-Pierre Jeancolas (1998) "From the Blum-Byrnes Agreement to the GATT Affair" in Geoffrey Nowell-Smith & Steven Ricci, eds., *Hollywood and Europe: Economics, Culture, and National Identity, 1945-1995* (pp. 47-62), London: BFI. For the context of cinema protection within French post-War reconstruction, see Irwin Wall (1991) *The United States and the Making of Post-War France, 1945-54*, Cambridge, Cambridge UP.

[11] The formal U.S. request to establish the Working Party is contained in GATT doc. L/1646, *Statement Made by the United States Representative* (November 24, 1961). Insightful commentary on context can be found in W. Ming Shao (1995), op cit. note #9, pp. 111-12; and Jon Filipek (1992), op cit. note #9, pp. 340-42.

[12] GATT doc. L/1741 is entitled, "Report of the Working Party,"p. 2. The Americans reasoned by transitive property that TV programming was a good because motion pictures were goods because the original GATT applied exclusively to goods. Since tradable services weren't defined in the 1940s, the GATT had to apply to goods by default. Although the French delegation argued skillfully for TV programming as a service in the early 1960s, the TV-as-a-service argument gained credibility with the European Court of Justice's ruling in the 1974 *Sacchi* case, described in Mary Footer and Christoph Graber (2000) "Trade Liberalization and Cultural Policy" *Journal of International Economic Law*, 3(3), 115-144. Sandrine Cahn and Daniel Schimmel (1997) "The Cultural Exception: Does it Exist in GATT and GATS Frameworks? How Does it Affect or is it Affected by the Agreement on TRIPs?" *Cardozo Arts & Entertainment Law Journal*, 15(2), 281-314 disagree, viewing *Sacchi* as a basis for concluding that trade regulations for goods apply to TV broadcasting. See Christopher Maule (2002) "Trade and Culture: Rhetoric and Reality" *Policy Options* (March), 39-44 for the unresolved status of TV programming.

[13] Karl Falkenberg (1995) "The Audiovisual Sector" in Jacques J.H. Bourgeois, Frederique Berrod, and Eric Gippini Fournier, eds., *The Uruguay Round Results* (pp. 429-434), Brussels: European Interuniversity Press comes as close to an authoritative account of A/V sector negotiations as exists, until such a negotiating history is compiled for the Uruguay Round. The term "cultural carve-out" was adopted by European negotiators to describe what was achieved in the Canada-U.S. FTA. "Cultural exception," applying to trade in cultural services, and "cultural exemption," applying to trade in cultural goods are the official terms. The TWF stipulated that 50 percent of TV programming shown on EU broadcasters must be of European origin.

[14] Historical reconstruction in this and the following paragraph come from Karl Falkenberg (1995), op cit. note #13; Eric Morgan De Rivery (1995) "Unresolved Issues in the Audiovisual Sector and the U.S./EC Conflict" in Jacques J.H. Bourgeois, Frederique Berrod, and Eric Gippini Fournier, eds., *The Uruguay Round Results* (pp. 435-443), Brussels: European Interuniversity Press. Mary Footer and Christoph Graber (2000), op cit. note #12; and W. Ming Shao (1995), op cit. note #9, also provide helpful accounts. Description of mid-session collapse in 1990 comes from a primary-source: *GATT Focus*, 75:10. Quotation from Donald MacDonald (1994) "The Canadian Cultural Industries Exemp-

tion Under Canada-U.S. Trade Law" *Canada-United States Law Journal*, 20, 253-262.

[15] Quotations from Karl Falkenberg (1995), op cit. note #13; and Eric Morgan De Rivery (1995), op cit. note #14. Final quotation from Richard Self (1993) "Debate over EC's Attempt to Exclude Audiovisual Sector From GATS Continues" *International Trade Reporter*, 10 (September 29): 1628.

[16] One of the best commentaries on the cultural sector within the FTA is Graham Carr (1991) "Trade Liberalization and the Political Economy of Culture: An International Perspective on FTA" *Canadian-American Public Policy* (June, 6), Orono, ME.: U Maine P. For a look at how other PTAs treat culture, see Hernan Galperin (2000) "Cultural Industries Policy in Regional Trade Agreements: the Case of NAFTA, the European Union, and Mercusor" *Media, Culture, and Society*, 21(5), 627-648. Three book-length negotiating histories of the FTA exist from the Canadian perspective. The best is Michael Hart with William Dymond and Colin Robertson (1994) *Decision at Midnight: Inside the Canada-U.S. Free Trade Negotiations*, Vancouver, BC: U British Columbia P.

[17] Article 2005 (1) contains four exceptions, which designate cultural products tariff-eliminations, forced divestiture, and copyright provisions outside the scope of the general exemption. "Cultural industries" include book, magazine, and newspaper publishing, distribution, or retailing, the production and exhibition of film and video, and radio, TV, and cable broadcasting. The description of the exemption as "retaliatory" or "conditional" comes from Gilbert Gagne (2002) "North American Integration and Canadian Culture" (p. 167) in George Hoberg, ed., *Capacity for Choice: Canada in a New North America* (pp. 159-186) Toronto: U Toronto P; and Ivan Bernier (1998), op cit. note #9, p. 123 when he writes that "if a Party is ready to pay the price, it can maintain cultural measures that are incompatible with the FTA." See Michael Hart and colleagues (1994), op cit. note #16, p. 384. Quotation from Donald MacDonald, op cit. note #14.

[18] Constructive ambiguity: an article or term is ambiguous because each side gets to decide the meaning for themselves, which then is constructive in helping to sell a sensitive negotiation to domestic constituents. Richard Stursberg (2000, November 25) "Trade and Culture Keynote Address to the Canadian Institute of International Affairs." Uruguay Round quotations of "inconvenient fact" from David Sands (1993, November 24) "Clash of Cultures Creates Latest Block to World Trade

Pact" *Washington Times*, B7-9; and Charles Truehart (1994, December 2) "Culture Clash: Canadian Nationalists Decry American Infiltration." *Washington Post*, A34.

[19] An excellent negotiating history of NAFTA is found in Maryse Robert (2000) *Negotiating NAFTA: Explaining the Outcome in Culture, Textiles, Autos, and Pharmaceuticals*, Toronto: U Toronto P. The characterization of a Canadian "win" is hers: due to an unshakable Canadian industry consensus, threat of Quebec secession, the FTA precedent, the political sensitivity of the sector, and U.S. desire to conclude negotiations in time for a mid-August, 1992 Republican nominating convention. U.S. industry position in "House Letter to Hills on Cultural Exemptions" *Inside U.S. Trade* (1991, April 15). Mexican trade negotiator quotations from *Nexos* 189 (September 1993): 66-67. Beyond the article's scope, but interesting, is the ambiguity concerning the *scope* of the exemption. Canada considers only those measures inconsistent with the original FTA vulnerable to retaliation, while the American implementing statement refers to any measures that "unfairly discriminate against U.S. cultural exports" (*Congressional Quarterly* 175). See Bernier (1998), op cit. note #9, for discussion of ambiguity. See also Christopher Maule and Keith Acheson (1998), op cit. note #10, pp. 14-16.

[20] Denis McQuail (1994) *Mass Communication Theory*, 3rd ed., London: Sage, p. 327. An authoritative supporting statements comes from the *International Encyclopedia of Communication* (1989), which writes "the history of field may be read as a persistent search for the effects that better describe the social roles of media" (492). Though specialists will quibble, the terms "influence," "effect," and we should add "impact," are interchangeable for a policy discussion of media influence or effect. Interested readers should read two excellent recent reviews: Sonia Livingstone (1996) "On the Continuing Problem of Media Effect" in James Curran and Michael Gurevitch, eds., *Mass Media and Society*, 2nd ed. (pp. 305-324), London: Arnold; and John Corner (2000) "'Influence:' The Contested Core of Media Research" in James Curran and Michael Gurevitch, eds., *Mass Media and Society*, 3rd ed. (pp. 376-397), London: Arnold.

[21] Origins of the question, and classification of field, comes from Michel Elasmar and John Hunter (1997) "The Impact of Foreign TV on a Domestic Audience: A Meta-Analysis" *Communication Yearbook*, 20: 47-69. The best way to verify this is to check the bibliography of an article for references from the other school of thought: you will often find no citations.

[22] Herbert Schiller (1969) *Mass Media and American Empire*, Boulder, CO.: Westview Press. Michael Tracey (1985) "The Poisoned Chalice? International Television and the Idea of Dominance" *Daedalus* (Fall), 11-56. John Tomlinson (1991) *Cultural Imperialism: A Critical Introduction*, Baltimore, MA.: Johns Hopkins UP, p. 171. Tomlinson parses Schiller's thesis into discourses on media imperialism, nationalism, capitalism, and modernity. John B. Thompson (1995) *The Media and Modernity: A Social Theory of the Media*, Stanford, CA.: Stanford UP.

[23] The summary and conclusions come from Michel Elasmar & John Hunter (1997), op cit. note #21. Well-constructed specific studies include Vernon Sparkes (1977) "TV Across the Canadian Border: Does it Matter?" *Journal of Communication*, 27(4), 40-47; David Payne (1978) "Cross-National Diffusion: The Effects of Canadian TV on Rural Minnesota Viewers" *American Sociological Review*, 43(October), 740-756; and David Payne and Christy Peake (1977) "Cultural Diffusion: The Role of U.S. TV in Iceland" *Journalism Quarterly*, 54, 523-531.

[24] Tamar Liebes and Elihu Katz (1990) *Export of Meaning: Cross-Cultural Readings of Dallas*, NY: Oxford UP. See also Ien Ang (1985) *Watching Dallas*. London: Methuen.

[25] The articles that vividly underscore this process for *All in the Family* begin with Neil Vidmar and Milton Rokeach (1974) "Archie Bunker's Bigotry: A Study in Selective Perception and Exposure" *Journal of Communication*, 24(1), 36-48; then refines the understanding of audience attitudes, including cross-culturally: John Bingham and Linda Giesbrecht (1976) "'All in the Family': Racial Attitudes" *Journal of Communication* 26(4), 69-74; and Wilhoit Cleveland and Harold de Bock (1976) "'All in the Family' in Holland" *Journal of Communication* 26(4), 75-84.

[26] For quotation, see Sonia Livingstone (1996), op cit. note #20. An excellent and brief treatment of the epistemological problems that beset mass communication theories is found in Robert Craig (1993) "Why Are There So Many Mass Communication Theories?" *Journal of Communication*, 43(3), 26-33. For quotation by John B. Thompson (1995), see op cit. note #22; for quotation by Michel Elasmar & John Hunter (1997), see op cit. note #21. A more detailed condensation of forty years of research falls outside the scope of *Canadian-American Public Policy*. Readers who wish to read such a history should request the 12,000-word chapter four of my thesis, entitled "The Influence of Media Content on Culture."

[27] An excellent intellectual history is found in William H. Sewell Jr. (1999) "The Concept(s) of Culture" in Victoria Bonnell & Lynn Hunt, eds., *Beyond the Cultural Turn: New Directions in the Study of Society and Culture* (pp. 35-61), Berkeley, CA.: U California P. The definitive etymology is Raymond Williams (1983) "Culture" in *Keywords: A Vocabulary of Culture and Society*, rev. ed. (pp. 87-93), NY: Oxford.

[28] David Held and colleagues (1999) "Globalization, Culture, and the Fate of Nations" in David Held, Anthony McGrew, David Goldblatt, and Jonathon Perraton, eds., *Global Transformations: Politics, Economics, and Culture*, Stanford, CA.: Stanford UP; The 10% claim from Walker Conner (1972) "Nation-builiding or Nation Destroying?" *World Politics* (24), 319-355.

[29] Quotation from Anthony Smith (1995) *Nations and Nationalism in a Global Era*, London: Polity, p. *viii*. Anthony Smith, a political scientist at the London School of Economics, is the leading English-language theorist of nationalism and national identity. Among his many publications, *National Identity* (2002), rev. ed. is an excellent overview. See also Eric Hobsbawm (1993) *Nations and Nationalism Since 1780*, rev. ed., Cambridge, Cambridge UP.

[30] See Anthony Smith (2002), op cit. note #29, pp. 8-15, for description of events that forge the descriptive content of national identity. Charles Tilly (1975) "Reflections on the History of European State-Making" in Charles Tilly, ed., *The Formation of National States in Western Europe* (pp. 3-83), Princeton, NJ.: Princeton UP.

[31] Though the purposes listed here are mine, a similar list can be found in Colin Hoskins, Stuart McFadyen, and Adam Finn (1997) *Global TV and Film*, chapter seven, "The Rationale for Government Intervention, and Implications for Assessing Trade Disputes" (pp. 81-88), Oxford: Oxford UP.

[32] The claim that this tradition begins with Lipset comes from Allan Smith (2000) "Doing the Continental: Conceptualizations of the Canadian-American Relationship in the Long Twentieth Century" *Canadian-American Public Policy* (44, October), Orono, ME.: U Maine. The list of characteristics comes from Seymour Martin Lipset (1990) *Continental Divide: The Values and Institutions of the United States and Canada*, NY: Routledge, p. 212. One earlier article is a further excellent source: (1986) "Historical Traditions and National Characteristics: A Comparative Analysis of Canada and the United States" *Canadian Journal of Sociology*,

11(2): 113-155. Lipset's comparative analyses, and focus on Canada, extend back to 1950.

[33] Criticism of Lipset has, for some time, been a cottage industry. In response to earlier work, Gad Horowitz wrote (1966) "Conservatism, Socialism, and Liberalism in Canada: An Interpretation" *Canadian Journal of Economic and Political Science*, 32(2), 143-171. More recently, Doug Baer, Edward Grabb, and William Johnston wrote (1990) "The Values of Canadians and American: A Critical Analysis and Reassessment" *Social Forces*, 68(3), 693-713, which precipitated Lipset (1990) "A Reply" *Social Forces*, 69(1), 267-272 and Baer, Grabb, and Johnston (1990) "A Rejoinder" *Social Forces*, 69(1), 273-277. Their final volley was Baer, Grabb, and Johnston (1993) "National Character, Regional Culture, and the Values of Canadians and Americans" *Canadian Review of Sociology and Anthropology*, 30(1), 13-36. In Lipset's defence was Jon Alston, Theresa Morris, and Arnold Vedlitz (1996) "Comparing Canadian and American Values: New Evidence From National Surveys" *American Review of Canadian Studies/Canadian Review of American Studies*, 26(3), 301-314. Robert Bothwell (1992) "More than Kin, and Less than Kind: The Political Cultures of Canada and the United States" in Stephen J. Randall, ed. *North America Without Borders?*, Calgary, AB.: U Calgary P., p. 287; and John Herd Thompson and Stephen J. Randall (1997) *Canada and the United States: Ambivalent Allies*, 2nd ed, Athens, GA.: U Georgia P., p. 241.

[34] Ronald Inglehart, Neil Nevitte, and Miguel Basanez (1996) *The North American Trajectory: Cultural, Economic, and Political Ties Among the U.S., Canada, and Mexico*, NY: Aldine De Gruyter. Michael Adams (2003) *Fire and Ice: The United States, Canada and the Myth of Converging Values*, Toronto: Penguin, p.4.. For Adams' list of characteristics, Canadians are "autonomous, inner-directed, flexible, tolerant, socially liberal, and spiritually eclectic," while Americans are supposedly more "materialistic, outer-directed, intolerant, socially conservative, and deferential to traditional institutional authority" (10). Adams' list, aside from revealing a pro-Canadian bias (he is Canadian), is different from Lipset's. For another comparative-value review that agrees in general terms, see Jennifer Welsh (2001) "Is a North American Generation Emerging?" *ISUMA*, 1(1): 86-92.

[35] Michael Adams (2003), op cit. note #34, acknowledges the challenges inherent in drawing interpretations: 3rd- variable problem, directionality, causation. An excellent article that plumbs the methodological

pitfalls to their depths is Alastair MacIntyre (1973) "Is a Science of Comparative Politics Possible?" in Alan Ryan, ed., *The Philosophy of Social Explanation* (pp. 171-188), Oxford: Oxford UP. Richard Gwyn in comments made at a presentation to the Conference Board of Canada, July 8, 2003. Edward Greenspon (2003, August 23) "Readers, please scour your attics" *Globe and Mail*, A2.

[36] Support for the inherent virtue of difference, expressed in media content, also comes from another unlikely source, economist Tyler Cowen (2002) *Creative Destruction: How Globalization is Changing the World's Cultures*, Princeton, NJ: Princeton UP, p. 131. Geza Feketekuty (2000) "Trade in Services" in Mordechai Kreinin, ed., *Building a Partnership: The Canada-U.S. Free Trade Agreement* (pp. 143-153), Calgary, AB.: U Calgary P.

[37]. Two academic conferences brought up the rear, reflecting this change *after* the formal policy shift had happened. The first was Rethinking the Line: The Canada-U.S. Border, at University of British Columbia, on October 22-25, 2000, see panel titled "Trade and Cultural Policy in a North American Context" (p. 53). Second, Integration Pressures: Lessons from around the World, at the JFK School of Government (Harvard University), on March 29-30, 2001, see panel titled "New Wine in Old Bottles: Cultural Policy in France and Italy" (p. 19-21). Ivan Bernier quotation from (1997) "Opening Markets and Protecting Culture: A Challenging Equation" *FORCES*, 117, 84-87. SAGIT stands for Sectoral Advisory Group on International Trade, and their February 1999 Report, "Canadian Culture in a Global World: New Strategies for Culture and Trade" was the basis for the October 1999 Cabinet decision by the Government of Canada. GOC quotation in International Agreement on Cultural Diversity: A Model for Discussion (2002), p. 1 (in December, available at www.dfait-maeci.gc.ca).

[38] *Stockholm Action Plan* (1998) Objective 3, p. 1. American A/V negotiating position, entitled "Audiovisual and Related Services" (GNS/W/120), available since December 2000. Horizontal, and Modal A/V Liberalization listed in WTO (1998) "Audiovisual Services: Background Note by the Secretariat" (S/C/W/40), June 15. Source for American motives from Stephen Siwek (1999) "Changing Course: Meaningful Trade Liberalization for Entertainment Products in GATS" Paper presented at World Services Congress, Atlanta, GA., November 1-3.

[39] This paragraph is only a snapshot of the INCP's development. Readers interested in piecing together the incremental, year-by-year,

meeting-by-meeting growth should consult their website (www.incp-ripc.org) for Annual Meetings Report. Also available, and useful, is a "Reader" that provides background information and reference papers. It is important to note that not one, but *three*, drafts of the Instrument were in existence at the Cape Town meeting: 1) the IICD one (championed by the INCP), 2) the IACD (championed by Canada's Foreign Affairs Department), and one championed by the international non-governmental organization, the INCD.

[40] See the Reader (at www.incp-ripc.org). Quotation from 2001 UNESCO Declaration from IACD (at www.dfait-maeci.gc.ca).

[41] Mr. Pettigrew's comments from "Notes for an Address by the Honourable Pierre Pettigrew, Minister for International Trade, to the International Institute on Communications on 'The Next Step Forward for Trade and Culture'" (November 28, 2002). Available, in December 2003, at www.dfait-maeci.gc.ca. Press coverage can be found in *Globe and Mail* (2002, November 29) "Trade Groups Calls for Treaty to Protect Cultural Diversity," B5. One might wonder why both Ministers' Pettigrew and Copps are referenced in the same paragraph. The development of the Instrument proceeds in Canada under a dual mandate, so the Instrument ultimately is the result of inter-departmental (and inter-governmental) collaboration. Source for UNESCO's consent, and projected implementation time-line, from "Ministerial Meeting of the Working Group on Cultural Diversity and Globalization of the International Network on Cultural Policy (INCP)" News Release (February 5 & 6, 2003). The draft of July 29, 2003 is titled "Draft International Convention on Cultural Diversity by the Working Group on Cultural Diversity and Globalization," and the future time-line is mentioned in the Opatija Statement, all of which are available at www.incp-ripc.org website.

[42] The strongest advocates of the WTO route are William Dymond and Michael Hart (2002) op cit. note #6, followed closely by Christopher Maule (2002) op cit. note #8. Daniel Schwanen (2001) "A Room of Our Own: Cultural Policies and Trade Agreements" *Choices*, 7(4); Chi Carmody (1999) "'When Cultural Identity Was Not at Issue:' Thinking About *Canada — Certain Measures Concerning Periodicals*" *Law and Policy in International Business*, 30(2), 231-320; Dennis Browne (1999) op cit. note #6 all endorse the WTO pathway, though some view WTO inclusion as less pressing and with less immediacy than others. European commentators view the situation likewise. See Mary Footer and

Christoph Graber (2000) op cit. note #12 and Rostam Neuwirth (2002) "The Cultural Industries and the Role of Article IV GATT: Reflections on Policy Options for Canada and the EU in the new WTO Round" unpublished paper presented at *Cultural Traffic: Policy, Culture, and the New Technologies in the EU and Canada* conference, Ottawa, ON: November 22-23. Finally, less prescriptive but still supporting the WTO path is Stephen Azzi and Tamara Feick (2003) "Coping with the Cultural Colossus: Canada and the International Instrument on Cultural Diversity" in David Carment, Fen O. Hampson, and Norman Hillmer, eds., *Canada Among Nations, 2003* (pp. 100-120), Toronto, ON.: Oxford UP.

[43] Dennis Browne (1999), op cit. note #6, pp. 370-71; Daniel Schwanen (2001), op cit. note #42, p 17. Schwanen takes as his example the codes of conduct in the areas of subsidies, anti-dumping- and countervailing duties from Michael Hart (1998) *Fifty Years of Canadian Tradecraft: Canada and the GATT, 1947-1997*, Ottawa, ON.: CTPL, pp. 91-92, 133-34. Gilbert Gagné (2002) "The Canada-U.S. Border and Culture: How to Ensure Cultural Sovereignty" *Canadian Foreign Policy*, 9(2), 159-170.

[44] Two points are worth noting. The first is that many other analyses, including those found in footnote #42, do not conduct a detailed textual analysis of any versions of the Instrument. The only exception is Christopher Maule (2003) "State of the Canada-U.S. Relationship: Culture" *American Review of Canadian Studies*, 33(1), 121-142, though he analyzes the version prepared by the SAGIT, known as the IACD. The second point to note is the text of the version here corresponds to the July 29, 2003 draft. The version that UNESCO will likely accept by resolution in 2005 may be substantially different. The assertion that states' are entitled to retain a cultural policy space has been made by a range of people, senior cultural bureaucrats, retired foreign services diplomats, economists and public policy experts, and a retired trade lawyer. Ivan Bernier's remarks were quoted in the historical development section. Daniel Schwanen, an economist, writes (2001), op cit. note #42, "I agree with the general idea underlying the SAGIT report: that Canada's cultural interests should be safeguarded in a positive way, through an affirmation of the space that must be accorded cultural policy" (15). At a conference entitled "Trade and Culture," November 28, 2001, then-Assistant Deputy Minister at Canadian Heritage Michael Wernick stated that he didn't believe the basic right for cultural policy needed to be justified, implying the area should be permanently beyond reach of trade liberalization.

[45] Text analysis from July 29th, 2003 version of International Convention (available at www.incp-ripc.org). Full title: Draft International Convention on Cultural Diversity by the Working Group on Cultural Diversity and Globalization.

[46] Chapter VIII, Article 18, "Dispute Settlement."

[47] To assess the binding nature of the WTO, or any international treaty, it is essential to examine the outcome of a dispute between two countries unequal in stature and power. One need only review the dispute-settlement determinations to see numerous examples of the U.S. losing, and complying, with the terms of settlement, including burdening domestic industry with material loss. The U.S. has not, however, complied with all rulings against it, which is why the system is characterized as quasi-judicial.

[48] The "Relationship" document is available under FAQs on the INCP website (www.incp-ripc.org). Mary Footer and Christoph Graber (2000), op cit. note #12, pp. 142-3. Gilbert Gagné (2002), op cit. note #43 also advocates such a strategy.

[49] Stephen Azzi and Tamara Feick (2003), op cit. note #42, pp. 112-14 agree that the U.S. is likely more inclined to negotiate than many give them credit for.

[50] Debra Steger (2002) "Afterword: The 'Trade and...' Conundrum -- A Commentary" *American Journal of International Law*, 96(1), 135-145 opens her article by writing that "[t]he issue of whether and how the trading system should deal with social and economic policies not strictly within the ambit of the WTO has been with us at least since the inception of the GATT in 1947-1948"(135). Sylvia Ostry (2000) discussant comments in response to William Dymond "Cultural Issues" (pp. 113-115) in Mordechai Kreinin, ed. *Building a Partnership: The Canada-U.S. Free Trade Agreement*, Calgary, AB.: U Calgary P.

[51] Information on U.S. re-entry into UNESCO comes from Jason Edward Kaufman (2003) "Will UNESCO Become An Extension of U.S. Foreign Policy?" *The Art Newspaper* (Accessed June 9, 2003: www.theartnewspaper.com/news).

[52] William Dymond and Michael Hart (2002), op cit. note #6. The advantages and constraints of the EU position were pointed out by Daniele Smadja, Ambassador, Head of the Delegation of the European

Commission in Canada, during the "Ties that Bind" Conference, sponsored by the Centre for Trade Policy and Law, in Ottawa, ON., on April 18, 2002. Svend Roed Nielsen spoke at the "Cultural Traffic: Policy, Culture, and the New Technologies in the EU and Canada" conference, held in Ottawa, ON., November 22-23, 2002.

[53]. Sylvia Ostry (2000) op cit. note #50.

[54] William Dymond and Michael Hart (2002), op cit. note #6. Only alluded to in Section II(B) was the impact that the exemption, especially the wording of the article, the "cultural industries exemption," had on the sector. The article caused the sector to place their faith in an exemption that was not truly there. When this was realized, the Canadian industry felt betrayed, which eroded their trust in the government for future negotiations. Should the UNESCO Convention instill a similar idea of sheltering their sector in principle but not reality once tested, this will be a case of *deja vu*.

[55] David Biette quotation in "Whoa! Canada!" *Washington Post*, July 1, 2003: C1-5.

[56] An excellent survey of some of these factors can be found in Christopher Maule (2002), op cit. note #8. Christopher Sands writes that we are "at the beginning of an interlude in a larger series of cultural trade disputes between Canada and the United States" (498) in op cit. note #5. A listing of identified trade barriers in the *National Trade Estimate*, current to the summer of 2003 can be found in Christopher Maule (2003), op cit. note #44. The "candy store" description of Canada comes from a Time executive, quoted in *Business Week*, 20 October 1975: 52. According to John Thompson and Stephen Randall (2002), op cit. note #5, "Canadians remain the most important single group of foreign consumers of American popular culture" (300).

[57] The controversy of Amazon Canada has been difficult to track, as it has received paltry media coverage. See "Amazon.com Plans Canadian Web Site" *Globe and Mail*, 1 June 2002: B1,4; "Canadian Booksellers Mount Legal Challenge to Amazon.ca" *Globe and Mail*, 2 August 2002: B1; and "Booksellers ask Court to Turn Off Amazon.ca" *Globe and Mail*, 3 August 2002: B1,5; and an opinion for keeping Amazon.Ca available, Rick Broadhead, "Don't Put Choice out of Reach" *Globe and Mail*, 23 December 2002: A17. Amazon Canada must appeal to Canadians, as the company announced record Canadian sales during the 2003 Christmas season.

[58] Michel Dupuy predated Sheila Copps as Heritage Minister. Kate Taylor (18 December 2003) "What Does it Really Take to Run A Culture Ministry?" *Globe and Mail*, R1, 5. Monica Gattinger (2003) "The Liberals' 'Reinvestment' in Arts and Culture: From Patron to Patronage?" in G. Bruce Doern (Ed.), *How Ottawa Spends, 2002-03: The Security Aftermath and National Priorities* (pp. 196-215), Toronto: Oxford UP reports a decrease in arts spending of 7% during Chretien's first term, extending to 17% through two terms, which corrects the unalloyed impression of Chretien as magnanimous cultural benefactor. Her analysis for spending increases and decreases is insightful. Finally, it is worth noting that timing is, indeed, everything. Had the C$560 million budget not been announced in May 2001, but had been planned for the Fall of that year, it likely would have been scuttled, the funds re-allocated to security, intelligence, and defence spending. Subsidies, of course, can be taken away as easily as they are given, and a federal budget deficit would place enormous structural pressure to continue Canadian cultural subsidy levels.