

The EU-Korea Protocol on Cultural Cooperation: Toward Cultural Diversity or Cultural Deficit?

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In this article, the new practice of the Commission of the European Union to negotiate protocols on cultural cooperation in parallel with free trade negotiations is analyzed and critically discussed. The focus lies on the protocol agreed upon in 2009 by the European Union and the Republic of Korea. Within the EU, the Commission advocates in favor of this new practice in the framework of implementing the UNESCO Cultural Diversity Convention. However, critical member states and professional organizations claim that the protocol runs counter to the Convention's spirit. An analysis of the protocol shows that, above all, the historical background and institutional setup of trade-related international cultural policy has cluttered debate on the new practice. The article concludes with a set of policy recommendations.

Introduction

The focus of this article is on the negotiation of a protocol on cultural cooperation between the European Union (EU) and the Republic of Korea (hereafter "Korea"), in parallel with the bilateral Free Trade Agreement both entities initialed on October 15, 2009, and signed on October 6, 2010. The agreement will be implemented starting July 1, 2011, after the European Parliament has given its consent.

Protocols on cultural cooperation represent a new practice by the European Commission (hereafter "EC" or "the Commission"), which negotiates the protocols, as it intends to implement the United Nations Educational, Scientific and Cultural Organization's Convention on the Protection and Promotion of the Diversity of Cultural Expressions, (hereafter "UNESCO Convention" or the "Convention") which has been operative since March 2007. The first protocol has been concluded in the framework of the Economic Partnership Agreement signed with the Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM) on October 15, 2008. This article will specifically address the second protocol with Korea, a developed country that has a relatively strong and well-developed cultural and audiovisual sector in global economic terms. Arguably, Korea's strength in the audiovisual sector has contributed to the fact that, in

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comparison with the EU-CARIFORUM protocol, the second protocol has generated much more concern and discussion among European stakeholders with regard to the consequences of the new practice.

On the one hand, the European Commission, backed by some EU member states, argues that this new practice will benefit cultural exchange and diversity. A protocol is seen as a means to implement the UNESCO Convention and to gather global support for it. This is vital, the Commission maintains, to counter undesirable developments in the trade liberalization frameworks of the World Trade Organization (WTO) and of bilateral free trade agreements the United States concludes (European Commission, 2007, 2008, 2009).

On the other hand, a number of European member states, cultural diversity coalitions and cultural and audiovisual professional organizations fear that the Commission, the EU's single voice in these negotiations, will not adequately take into account the specificity of culture:

This unilateral strategy of the EC, which confiscates member states' competency in the field of culture, takes culture back into trade negotiations. It gives EC trade negotiators an additional sector to trade off in a global negotiation, without taking into account the specific requirements of the cultural and audiovisual sector. (European Coalitions for Cultural Diversity, 2009)

The critics argue that the EC is stretching its competences by incorporating culture into trade negotiations by the back door, while cultural and audiovisual matters primarily belong to the member state policy domain. Moreover, they fear that the Commission is treating the cultural and audiovisual sectors as just another bargaining chip for use in trade negotiations (ECCD, 2009). In this view, the new practice of linking negotiations on trade and cultural cooperation will put cultural diversity at risk.

The core aim of this article is to understand why such different appraisals exist among European stakeholders, notwithstanding the protocol's intricate relationship with the UNESCO Convention, which all entities seem to subscribe to. Did the Commission embark on a trade-driven course, opposite to the spirit of the UNESCO Convention, as the critics argue? Or can other reasons be identified for the resurgence of anxiety among stakeholders? To answer these questions and gain a thorough understanding of the EU-Korea protocol development, a review of relevant literature—which is rather scarce due to the topicality of the research subject—is supplemented by a document analysis of the protocol's negotiating texts and a series of expert interviews.¹

1. Twelve interviews were held from the end of September to the end of November 2009. Firstly, face-to-face interviews were conducted with representatives of Directorate General Trade, Information Society and Media, and Education and Culture. Secondly, telephone interviews were held with representatives of a set of EU member states (France, Germany, Italy, Belgium, the Netherlands, Sweden, and Hungary) and of the European Coalitions for Cultural Diversity. For reasons of confidentiality, references to these interviews are made in a general fashion with the names of the interviewees omitted.

The analysis will proceed as follows: The article sets out from a concise contextualization to pinpoint the sensitivities associated with the new practice. In addition, it discusses relevant changes to the EU's common commercial policy framework under the Treaty of Lisbon. Subsequently, an overview and analysis of arguments and criticisms with regard to the EU-Korea protocol and its main features is provided. After that, the question of why such different perspectives persist among stakeholders, notwithstanding their (at least rhetorically) common goal to strengthen cultural diversity, will be addressed and theoretically framed. Drawing from principal agent theory and historical-institutionalist insights, the analysis shows that the new practice does not expose a hidden liberalization agenda of the European Commission. The continual friction with regard to trade and culture issues relates foremost to the European compartmentalized policy system's inability to deal proactively with historical suspicion among stakeholders and the complex institutional features of the EU's international cultural policy. In this respect, the article concludes with a set of policy recommendations. The first recommendation points to the need to improve support for the implementation of the UNESCO Convention by means of protocols on cultural cooperation. Secondly, we advocate investing in evidence-based policy making. Finally, we argue for the organization of structural, strengthened, and transparent reflection and debate on the new practice.

The Cultural Trade Quandary

To understand the sensitivities associated with the negotiation of a protocol on cultural cooperation in parallel with bilateral free trade negotiations, a short history of the so-called "cultural trade quandary" (Browne, 1998) is indispensable. From a European perspective, the problematic nature of the issue resides in both external international and internal European processes and procedures.

The External Quandary

With regard to the former, the cultural trade quandary foremost refers to the "perennial disputes over trade and culture" (VanGrasstek, 2006, pp. 93–97) in the multilateral trading system. Whereas the U.S. seeks the liberalization of the audiovisual sector in the WTO, European countries cling to trade barriers and measures to protect their cultural industries, the audiovisual sector in particular. Consequently, in former trade negotiations, the EU has adopted a very wide range of exemptions from the WTO's Most Favored Nation principle for the audiovisual sector and made no liberalization commitment. However, the audiovisual sector has been included in the General Agreement on Trade in Services (GATS). Consequently, audiovisual services trade is, in principle, subject to progressive liberalization (Pauwels & Loisen, 2003, p. 296; Puppis, 2008, p. 412).

In the current Doha Round of trade negotiations, the issue of audiovisual services has so far not been thoroughly addressed. This does not mean, however, that the context for the cultural trade quandary has remained the same. The U.S., for one, has recently diversified its strategy. In addition to its actions in the WTO, it has reached a number of successes to advance the liberalization process through bilateral free trade agreements (Wunsch-Vincent, 2003). Although the EU and its member states continue to refrain from any concession in the WTO, they have shifted gear as well. Essential in this respect has been the successful and rapid conclusion of the UNESCO Convention. Nonetheless, the Convention, which ought to

contribute to more balanced cultural exchanges, is in its infancy. It came into effect in 2007 and needs to be fine-tuned and ratified more widely in order to evolve into a more effective legal tool (Graber, 2006). This process has now begun for the EU. One particular tool to implement the Convention in its external relations is the conclusion of protocols on cultural cooperation with third countries.

The Internal Quandary

Although all of the “European” entities involved share the idea that a specific regime for dealing with audiovisual services is in order, they sometimes differ considerably on the details. In the Uruguay Round, for example, the European Commission and member states such as the UK, Germany, the Netherlands, Luxembourg and Denmark initially backed the “cultural specificity” approach, which included minimal liberalization commitments on audiovisual services. France, Spain, Belgium and Ireland advocated gaining a “cultural exception” (Gualtieri, 2002, pp. 107–112; Pauwels & Loisen, 2003, pp. 294–296). Importantly, the European Court of Justice stated in 1994 (in its Opinion 1/94) that the exclusive EU competence in trade policy did only apply to certain aspects of trade in services. The competence to conclude the GATS was therefore shared by both the EU and the member states (Leal-Arcas, 2007, pp. 78–79). Consequently, the EU position was aligned with the position of its most conservative member, France, which wished to proceed in the Uruguay Round on the basis of the (ultimately failed) cultural exception strategy.

In other words, the division of competences with regard to cultural and audiovisual services trade is subject to controversy. The Lisbon Treaty has again amended this division of competences, however, and may alter the context for the development of future protocols on cultural cooperation.

EU Common Commercial Policy after the Lisbon Treaty

Firstly, Article 207 of the Treaty on the Functioning of the European Union (TFEU) (on the Common Commercial Policy, *ex. Article 133* of the Treaty establishing the European Community (TEC)) stipulates that EU trade policy is an exclusive EU competence for all sectors. Hence, sectoral carve-outs, shared competences or mixed agreements have been dispensed with in order to streamline² and simplify

2. Concretely, in the conduct of the Common Commercial Policy, the EC first makes a proposal to the Council with regard to the contents and initiation of international trade negotiations (Baldwin, 2006, p. 931; Dür & Zimmermann, 2007, p. 780). It is the Council of the EU that grants the negotiating mandate to the Commission. Although the mandate is not legally binding, it sets certain parameters for the negotiators, as the full package of agreements needs to be approved by the Council at the end of the process (Meunier & Nicolaidis, 2005, pp. 254–256). Secondly, the actual negotiations are conducted by the Commission, which continually gives feedback to and discusses the negotiations with the Trade Policy Committee, formerly, the Article 133 Committee, referring to the Common Commercial Policy article in the TEC. Because the member states can take on varying positions, depending on the subject matter discussed, the Commission usually tries to realize a consensus. Certainly with regard to sensitive negotiating matters such as the audiovisual dossier, it will try to avoid one member state’s call for a

the EU's Common Commercial Policy (Woolcock, 2010). Before the Lisbon Treaty, Article 133 TEC, which set out the procedures for action in the framework of the Common Commercial Policy, provided a sectoral carve-out for, among others, cultural and audiovisual services in Paragraph 6. Notwithstanding that external trade policy was ordinarily dealt with exclusively by the EU, Article 133(6) TEC stated that agreements which include provisions regarding cultural and audiovisual services fall within the shared competence of the EU and its member states. Consequently, decisions in the Council needed to be taken by unanimity and such mixed agreements were to be concluded jointly by the EU and the member states (Krajewski, 2005, pp. 95–97; Meunier & Nicolaidis, 2005, p. 257).

Secondly, this means that in principle it is no longer possible for a member state to veto a negotiation package that includes cultural and audiovisual services. In the pre-Lisbon context, the unanimity requirement implied that the European Union negotiators' (the European Commission) hands were tied by the most conservative member state. However, this strengthened them to resist demands for policy changes in issues where the EU has a defensive interest (Meunier, 2005), as in cultural trade. This procedural framework was in place when the protocol with Korea was negotiated. Its ratification and the negotiation of future protocols on cultural cooperation will take place in the new post-Lisbon procedural context.

Thirdly, the European Parliament's role has been increased. Formerly, external trade competences were concentrated at the level of the European Commission and the Council of the EU, with no formal say in the process by the European Parliament. With the Treaty of Lisbon, the Parliament must give its consent to the conclusion of international trade agreements. Thus its influence toward the negotiating process has been strengthened. This development has been hailed as an improvement in terms of striking a balance between "speaking with one European voice" on the one hand and increasing transparency in discussions among different EU entities and member states on the other (Baldwin, 2006, p. 930). The strengthened role of the European Parliament contrasts with the fact that national parliaments no longer have to ratify trade agreements due to the EU's exclusive competence in all domains of the Common Commercial Policy. This raises questions with regard to democratic legitimacy as the national parliaments' control function has disappeared (Krajewski, 2005, p. 126), although effective scrutiny was seldom exercised by most member states (Woolcock, 2008, p. 5).

Notwithstanding the significant amendments made with regard to the division of competences and the decision-making process on trade policy, the specificity of audiovisual goods and services remains acknowledged in Article 207 TFEU, albeit in a different form (Leal-Arcas, 2010, p. 495). Article 207(4) subparagraph 3(a) explicitly stipulates that "the Council shall also act unanimously for the negotiation and conclusion of agreements . . . in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity."

The interpretation and implementation of this provision might prove difficult, however. Who will and how can one judge and measure that a risk exists for cultural and linguistic diversity—a concept that

unanimous vote on the whole package as a consequence of one particular domain. Finally, the Council and the European Parliament approve or reject the trade agreement at the end of negotiations.

is not defined in the TFEU? Another question is, how will the provision function? Two options seem plausible. The Council could opt to continue the former practice to decide unanimously in the case of agreements that include cultural and audiovisual services (de Witte, 2008, p. 238). Another option would be that the member state(s) requesting unanimity should demonstrate that a risk actually exists. Should other Council members not follow the argument made, the normal qualified majority vote would hold, and the Court of Justice of the European Union would become the last recourse of parties that claim the agreement poses a risk to cultural and linguistic diversity (Leal-Arcas, 2010, pp. 481, 497; Krajewski, 2005, p. 122).

The future will clarify how this provision will be implemented (de Witte, 2008, p. 238; Krajewski, 2005, p. 122; Leal-Arcas, 2007, p. 87). Nonetheless, it is clear that dealing with cultural aspects in the context of trade negotiations and agreements is both politically and practically complex, sensitive and often ambivalent. Critics of the EU-Korea protocol contend that the Commission has exploited these ambivalences.

The EU-Korea Protocol on Cultural Cooperation

The European Commission Takes the Lead: Rationale for the Protocol

The mandate that authorized the Commission to negotiate a free trade agreement with Korea stated that audiovisual and other cultural services would be treated in a specific cooperation framework. The framework should maintain the parties' options to preserve and develop their capacity to define and implement their cultural and audiovisual policies, while promoting cultural and audiovisual exchanges and favoring intercultural dialogue. This vague mandate left the Commission considerable leeway to take action in the following years. The Commission (2007, 2008) later explained that the rationale for negotiating protocols on cultural cooperation is at least fivefold.

The first ground to pursue the new practice is to implement the UNESCO Convention that has become part of EU law, thereby showing its commitment to the Convention by means of swift action (Interviews with EC representatives).

Second, and next to "leading by example" in convincing others of the importance of the Convention, a protocol is a concrete instrument to encourage states that have not yet ratified the Convention to promptly do so.

Third, the Commission wants to acknowledge and show other parties that no one-size-fits-all approach can adequately take into account the dual nature of culture. On the one hand, cooperation for more balanced exchanges among the parties is necessary. On the other hand, each country should be able to develop tailored cultural policies that respond to their specific situation. Concretely, more leeway should be awarded to developing countries, whereas relations with countries with already developed cultural industries should be based on the principle of reciprocity (Interviews with EC representatives).

Fourth, with respect to audiovisual services, the Commission wants to make clear that the traditional position still holds, i.e., trade provisions concerning market access do not apply to audiovisual services. These will exclusively be dealt with in the protocol on cultural cooperation, which is annexed to the free trade agreement.

Finally, the protocol is an instrument to implement the Audiovisual Media Services Directive in which the possibility is foreseen that audiovisual co-productions between companies of EU member states and third-party companies are classified as "European works," which would make them eligible to be included in the quota provisions both entities have installed to protect and support their audiovisual industries.³

As the concrete ideas of the Commission concerning a specific audiovisual and cultural cooperation framework have become clear, and despite the overall argument that protocols on cultural cooperation would be beneficial for cultural diversity, some member states, in collaboration with European professional organizations and coalitions for cultural diversity, have criticized the new approach on a number of fronts.

The Debate Unfolds: Criticisms and Refinement of the New Approach

La Commission de Bruxelles n'a pas de mandat pour signer cet accord dans des conditions qui menacent la diversité culturelle. [The Brussels Commission has no mandate to sign this agreement under conditions that threaten cultural diversity.] (French Culture Minister Christine Albanel in Berretta, 2009)

A first cluster of criticisms revolves around the division of competences and the parallel negotiations on free trade and culture. Several stakeholders fear that the specific character of culture and the audiovisual sector will be downgraded in free trade negotiations because in such negotiations a trade perspective is predominant. Firstly, the protocols are discussed only in the Trade Policy Committee (*ex. Article 133 Committee*), which supervises and discusses the Commission's progress on behalf of the member states. Secondly, Directorate General (DG) Trade takes the lead in the actual negotiations, whereas other DGs with a more cultural orientation (DG Education and Culture (EAC) in particular) have a secondary role. This institutional setup may lead to a protocol becoming a mere bargaining chip in the overall negotiations on trade in services, the critics fear.

From a legal perspective, the simultaneous negotiations are not illogical and are a consequence of the dual nature of audiovisual goods and services. Moreover, coincident negotiation and ratification processes have a clear practical benefit. With regard to the substantial critique that a cultural reflex is

3. With the Audiovisual Media Services Directive of 2007, the definition of "European works" has been broadened to include co-productions between EU member states and third countries that meet certain criteria as stipulated in agreements between the EU and non-EU countries. The EU-Korea protocol would make it possible for certain co-productions to be defined as "European works" in the EU market and as "Korean works" in the Korean market (see *infra*).

absent in the negotiations, a straightforward answer is far more difficult. On the one hand, DG Trade's leadership and the unpredictability of the give-and-take process in trade negotiations could indeed put cultural considerations under strain. Moreover, some member states—in the trade and culture dossier, usually the UK, Sweden, and the Netherlands—have put forward in the past that the specific nature of culture does not necessarily exclude it from trade negotiations (Interviews with member state representatives from Sweden and the Netherlands). On the other hand, respondents indicated that more liberal-oriented member states have remained silent in the debates, as did most other member states. Critical countries, especially France and (the Walloon part of) Belgium, occasionally supported by Spain, Italy, Greece, and Germany, have been more active in expressing cultural concerns (Interviews with member state representatives from Italy, France, and Germany). This, in turn, has led to debate on the position and strategy the EC should take in upcoming negotiating sessions (Interviews with member state representatives from the Netherlands, France, and Germany and with European Coalitions for Cultural Diversity representative). Moreover, Commission representatives stress that the idea to develop protocols on cultural cooperation, as well as the preparation for negotiations, have always been worked out after deliberation of the three responsible DGs (TRADE, EAC, and Information Society [INFSO]). They did concede, however, that the changes made in the course of the negotiations with Korea had been communicated insufficiently and too late to the relevant European stakeholders (Interview with EC representative).

- *Discussing culture in a trade framework: A peculiar approach?*

A second cluster of criticism targets the relationship between the protocol and the UNESCO Convention. Why put that much energy in the development of a new international instrument to counterbalance developments in the WTO, to subsequently re-integrate culture in a trade context (Interview with member state representative from France and European Coalitions for Cultural Diversity representative)? As the French government put it: "PCCs, as they have been negotiated up to the present time, do nevertheless run the risk of allowing a de facto reintroduction of audiovisual services into trade negotiations" (France, 2009, p. 5). The spirit of the Convention should be abided by and prior ratification of the Convention is necessary, the skeptics claim (*ibid.*, p. 8).

In its reply to this critique, the EC refers to a bigger picture in which the protocol with Korea should be framed. Firstly, quick action is seen as essential to make sure that the Convention will be able to take on its role as a counterweight to (future) developments in the WTO. Secondly, the protocol is a response to the United States' bilateral strategies to further audiovisual trade liberalization. Developing partnerships with third countries by means of a protocol could broaden and strengthen the alliance in support of the Convention (Interviews with EC representatives). It would also support, in turn, Korean interest groups that protest against the ratification of the Korea-U.S. free trade agreement (KORUS), which is seen as incompatible with the principles of the Convention (Interview with EC representative; Choi, 2007, p. 271). Finally, the protocol with Korea could be an instrument to align an important Asian partner to the EU's position regarding the interinstitutional dialectics between the WTO and UNESCO in the case of cultural diversity (Interview with EC representative).

- *The co-production provision in the protocol.*

A third cluster of critiques concerns the provision on co-productions and the possible qualification of Euro-Korean co-productions as “European works.” Firstly, critical member states and civil society organizations claim that preferential treatment should be awarded only to developing countries, according to Article 16 of the UNESCO Convention. Secondly, no preliminary study has been carried out to investigate the effects this provision might have on European audiovisual companies. The critics fear, finally, that should the EC proceed with its approach, it would be detrimental to European cultural industries (e.g., the animation sector). In that respect, they see the protocol as counterproductive to cultural diversity.

From a legal perspective, the protocol seems reconcilable with the UNESCO Convention. Articles 12 and 20 give a legal base for promoting the Convention’s goals through cooperation with nondeveloping countries—even if the latter have not ratified the Convention. With respect to the critique of taking a “leap into the dark” as no preliminary study has been carried out, the EC’s argument is more susceptible to further criticism. The Commission argues that data on cultural and audiovisual services trade are fragmentary and incomplete (Interview with EC representative). A study beforehand would therefore be difficult and too time-consuming, considering also the bigger picture and urgency to act. Nonetheless, the Commission claims that the reciprocal basis of the co-production provision would contribute to cooperation, sharing of know-how and opening up markets that are difficult to penetrate. The European critical parties, in turn, fear that these benefits would primarily apply to the other party. The Commission’s argument that protocols with partners that have a strong and already developed audiovisual sector are based on reciprocity does not hold, according to the European cultural industries. The EU and Korea markets are incomparable (in size, number of consumers, wages of audiovisual professionals, etc.). Moreover, the smaller Korean market is already saturated with Korean and Hollywood productions. Consequently, the critics argue that, in reality, not cooperation and exchange, but one-way-traffic from Korea to the EU would be the result of the co-production provision in the protocol (Interview with ECCD representative).

On the one hand, the sector’s fears are somewhat exaggerated. The current number of Euro-Korean co-productions is marginal at best. Moreover, other supporting mechanisms the EU has installed are left unaffected. Market opening is therefore very limited, as the provision applies only to one very specific form of cultural exchange. On the other hand, the protocol’s approach would set a possibly dangerous precedent as future negotiations with considerably larger and powerful countries such as India are already planned (France, 2009, p. 6). Notwithstanding the bigger picture the critical parties seem to support, the concrete benefits for European stakeholders are limited, the skeptics maintain. If, nevertheless, the process of negotiating protocols on cultural cooperation is continued, the criteria and mutual duties concerning co-production should be very strict (Interview with ECCD representative and member state representative from Italy).

In any case, it is clear that the admittedly difficult cost-benefit analysis of the EU-Korea protocol, taking into account both long-term strategic policy goals and short-term economic repercussions, has not

been carried out thoroughly. Moreover, the Commission has not communicated very well to the traditionally skeptical member states and professional organizations.

- *Overarching critique vis-à-vis the underlying model of a protocol.*

In this respect, a final and overarching critique refers to the fundamental model on which a protocol is based. A number of member states and sector and civil society organizations allege that the EC intended to simply transpose the protocol with CARIFORUM to the Korea negotiations. Korea is, however, a country with developed cultural industries. The differences between Korea and CARIFORUM are not reflected in both protocols, the critical parties maintain (Interview with ECCD representative; France, 2009). The Commission nonetheless disaffirms this evaluation (Interview with EC representative).

It is difficult to trace the internal EU decision-making processes with regard to EU trade policy due to the secrecy of the international negotiations and the debates within the Trade Policy Committee. On the basis of a comparison between the final EU-CARIFORUM protocol signed on October 15, 2008 (CARIFORUM-EC, 2008); a draft version of the agreement between the EU and Korea discussed in March 2009 (NN, 2009); and the final EU-Korea protocol, initialed on October 15, 2009 (Korea-EC, 2009), we can, however, analyze whether and how the EU-Korea protocol has been adapted vis-à-vis the EU-CARIFORUM protocol, reflecting adequately Korea's developed cultural sectors.

Most of the provisions of the EU-CARIFORUM protocol have been retained in the March 2009 draft and in the final version of the EU-Korea protocol, but in four instances, crucial changes have been introduced. With regard to the former, these articles—dealing with, for example, strengthening cooperation in and promotion of performing arts or the protection of cultural heritage—were uncontroversial to all parties (Interviews with ECCD representatives and EC representative).

In case of the latter, a first significant change has been made in the preamble of the draft protocol with Korea – and is retained in the final text. The adjusted preamble indicates that the protocol needs to reflect the degree of development of both parties, and consequently, the different nature of cultural cooperation pursued. Such cooperation should be grounded on a reciprocal basis. Moreover, it has been proposed by the EU that the protocol will come into effect only after all parties have ratified the UNESCO Convention.

Secondly, the institutional framework to follow up on eventual implementation of the protocol has been reinforced. The draft protocol introduces the establishment of a Committee on Cultural Cooperation. In the final protocol, it is explicitly stipulated that members of this committee will have to possess expertise in the cultural domain. This committee also will address disputes concerning provisions of the protocol and not the bilateral trade dispute settlement body. In case the parties cannot reach an agreement, it will refer the dispute to a panel composed of people with knowledge of and experience with the substantial (cultural) provisions of the protocol. Furthermore, cross-retaliation between the free trade agreement and protocol is not allowed. Thus dispute settlement with regard to commercial and cultural aspects is fully decoupled.

The third issue relates to conditions for the recognition of co-productions as European or Korean works. These conditions have been tightened in the draft protocol, in terms of higher thresholds (*vis-à-vis* the CARIFORUM deal) for a balanced financial and artistic input by the Korean and European producers participating in a co-production. Moreover, the draft provides that the protocol will be evaluated some years after initiation, after which the Committee on Cultural Cooperation can decide on adaptations. Moreover, the parties reserve the right to suspend the system of preferential treatment (by way of co-productions) if changes to the relevant legislation by one of the parties affect the advantages reserved to the other party. In the final protocol, the conditions for recognition of co-productions as European productions have been tightened even further. Moreover, another unconditional safeguard mechanism has been introduced that allows each party (in practice, every member state) to unilaterally terminate the beneficial treatment of the other party with regard to co-productions.

It remains difficult to determine under whose influence these changes have been proposed and initiated by the European Commission. Whereas the Commission asserts that full transposition of the CARIFORUM model to the Korea negotiations had never been envisaged (Interview with EC representative), some member state representatives and the sector claim the achievement of these amendments (Interviews with European Coalitions for Cultural Diversity representatives and member state representative from France). On the one hand, the alterations already apparent in the draft seem to indicate that simply transposing the CARIFORUM model to the second protocol with Korea had been set aside instantly, or at least relatively early, by the EC. On the other hand, further changes during the negotiation process reflect that criticisms by member states and professional organizations (with regard to decoupling trade and culture or stricter conditions for co-productions, for example) needed to be, and have been, taken into account.

After these changes were introduced, all EU member states were willing to accept the protocol on cultural cooperation. However, the cultural sector, along with France, remains vigilant as the EC is planning to negotiate cultural cooperation agreements during outstanding and future free trade negotiations, with among others India, ASEAN, neighboring Mediterranean countries, and Canada.

Since the conclusion of the EU-Korea protocol on cultural cooperation, the European Commission has therefore elaborated its concept paper on the negotiation of protocols of cultural cooperation for a new discussion with the member states. Moreover, two new cultural cooperation frameworks have been agreed to between the EU and third countries.

With regard to the Andean countries Peru and Colombia, and in negotiations with Central America, the EU seems to have taken the criticisms raised during the negotiation of the EU-Korea protocol seriously. An agreement on cultural cooperation is still negotiated simultaneously but is not annexed to the trade agreement because of the contentious issue of the co-production of television programs (especially in the Colombian case). Because no preferential treatments on co-production have been included in these frameworks, the agreements are disconnected from the trade agreement altogether. Hence, not a protocol but a stand-alone agreement on cultural cooperation has been the result in case of the Andean community. For Central America, the cultural cooperation provisions are attached to the cooperation provision on cultural and audiovisual matters under the umbrella Association Agreement.

Consequently, it seems that the model for cultural cooperation that will be used in future agreements is relatively flexible, although its actual content will also depend on the specific negotiations and bargaining between the EU and its international partners.

Old Fears Die Hard: Explaining Enduring Criticism of the New Practice

Despite the acceptance of the final text of the protocol by the EU, the fears and anxiety expressed during the negotiations have clearly not withered away (see e.g., France, 2009). How might one explain that, on the one hand, all EU member states have endorsed the UNESCO Convention, including the European Commission negotiating on their behalf; yet, on the other hand, in the first act of its implementation in the EU's external relations, this consensus seems to have crumbled and differences in opinion have resurfaced rapidly?

Did the Commission indeed betray the spirit of the UNESCO Convention in pursuing a pro-trade course in the protocol with Korea, as the critics argue? Drawing on principal-agent concepts and insights (Damro, 2007; Pollack, 1997), the analysis of the protocol's development does not indicate extensive agency slack—i.e. independent action by an agent (the European Commission) that is undesired by the principals (the member states). The conditions for such strong autonomous supranational behavior (Pollack, 1997, pp. 129–130) were largely absent in this case.

Firstly, although the member states' preferences with regard to the objectives of the protocol diverged, the more liberal-minded member states did not explicitly counter the criticisms raised by their more conservative counterparts. Consequently, the potential for the EC to exploit differences in preferences among member states to advance its own interests—if any—was small. Secondly, as the protocol had to be endorsed unanimously by the member states, the Commission was tied to the hands of the most conservative member state, namely France. Thirdly, although asymmetrical access to information could enhance an agent's autonomy, in this case it seems more likely to have led to an increase in the distrust and consequent opposition of suspicious member states and professional organizations (see *infra*). Lastly, pro-liberalization constituencies have not pressured the critical principals to bargain culture for Korean trade concessions. On the contrary, the cultural sector acted as a "fire alarm" to back up and strengthen conservative member states' critical stance.

In conclusion, it is unlikely that the Commission would have decided to pursue a hidden agenda to liberalize the audiovisual sector by backdoor maneuvering. Moreover, the EC was, irrespective of the nature of its preferences, well aware that such a step would jeopardize its ability to negotiate on external cultural cooperation in the future. If, in practice, the interests of the agent and principals were not that distant, what other elements can account for the enduring anxiety among stakeholders?

Firstly, there has always been a degree of tension, even distrust, between the member states and the Commission in the realm of the Common Commercial Policy⁴ (Bretherton & Vogler, 2006, p. 68).

4. E.g., After the Commission was forced to renegotiate the infamous Blair House Agreement (which enabled the inclusion of agriculture in, and paved the way for, the Uruguay Round) the then French

This lack of trust can be attributed to, and is to a significant degree justified by, the EU's often-depicted nature as a compartmentalized policy system (Nugent, 2003, p. 357). In this view, the EU consists of a number of specific policy subsystems that operate relatively autonomously. These policy subsystems are made up of different entities from different policy levels that interact in dissimilar institutional settings, under different formal decision-making rules and informal norms. This "vertical" fragmentation not only adds to, but also cuts across the horizontal, multi-level divisions within the EU. In this case, DG Trade often maintains good working relations with national trade policy officials (e.g. through the Trade Policy Committee) and national ministers responsible for trade policy in the Council. Yet it interacts much less frequently and intensively with entities from the cultural policy subsystem. Moreover, it is often assumed that the trade policy subsystem of the EU is "focused on bringing down trade barriers and creating global rules and institutions that will facilitate the operations of the global economy" (Pilegaard, 2009, p. 267).

Secondly, this compartmentalized nature of the EU obviously reduces the confidence of cultural-minded public and private entities that the dual nature of audiovisual goods and services will be respected by the trade policy subsystem during free trade negotiations. Although the Trade Policy Committee controls DG Trade extensively, in the compartmentalized policy system view doubts will remain over whether nontrade cultural diversity concerns are taken into account by the member state trade policy experts present in the committee. The complex division of competences in trade and culture issues certainly does not help to mitigate this anxiety.

Thirdly, the Commission failed to convince the European cultural sector and the suspicious member states of the long-term benefits of the protocol, i.e. tying Korea in with the European vision on the cultural trade quandary. In addition, the lack of prior study and evidence-based information on any direct impact the protocol could generate aggravated fears and concerns within the European cultural sector and policy subsystem.

Finally, this compartmentalization is duplicated at the member state level. It is striking that only when negotiations were already well-advanced, the EU-Korea protocol began to be a source of concern for national ministries of culture (and still only in some member states), often alerted by professional organizations. Strategic coordination between the member states' trade and culture ministries has been insufficient in the case of the EU-Korea protocol (Interviews with ECCD representatives and member state representatives from Germany and Italy).

Foreign Affairs Minister Mr. Juppé declared to the Trade Commissioner Sir Leon Brittan, "*Nous ne vous faisons pas confiance, nous ne vous avons jamais fait confiance, et nous ne vous ferons jamais confiance*" [We do not trust in you, we have never trusted in you, and we shall never trust in you]. (Leal-Arcas, 2008, p. 378). Charges of the same kind were addressed in October 2005 and January 2007 by the French government toward the then EU Trade Commissioner Peter Mandelson (concerning the scope of the mandate to negotiate the agricultural basket of the Doha Round). In all these examples, as in the case of trade and culture issues, it was France that stood up against the Commission.

In sum, a historical-institutionalist informed depiction of the EU as a multi-level and compartmentalized system indicates that several seemingly basic historical and institutional problems have contributed to the divergent appraisals of the new practice of negotiating protocols on cultural cooperation.

Conclusion

In conclusion, the analysis of the EU-Korea protocol on cultural cooperation's development reveals that the European Commission did not simply embark on a trade-driven course opposite to the spirit of the UNESCO Convention. The arduous history of the cultural trade quandary combined with the institutional complexity of dealing with trade and culture issues in the EU's compartmentalized policy system, remain primarily responsible for the different appraisals of the new Commission practice.

In this context, it is laudable that the EC has taken on the process of implementing the UNESCO Convention, which suggests the EU's willingness to at least continue its operationalization. Moreover, the new practice is novel in its effort to go beyond the usual trade-versus-culture debate and to find ways of addressing the dual nature of culture and audiovisual services in external policy. The Commission's proposals have, furthermore, initiated discussion among European stakeholders on the possibilities for entrenching cultural diversity concerns in European and international legal and policy frameworks. The different safeguards that have been introduced after internal debates on the protocol with Korea also point to an interesting development. On the one hand, the new approach partly differs from the traditional position to exclude culture from international agreements and aims to increase cultural exchanges among countries. On the other hand, the EU-Korea protocol's built-in safeguard instruments allow for ex-post monitoring and evaluation of the new approach's functioning, including its discontinuation if necessary.

However, to strengthen future negotiations on cultural cooperation agreements with third countries, and to improve policy processes aiming for a coherent and effective EU international cultural policy in general, several weaknesses of the new practice need to be addressed. As there has been only limited prior study of the impact the protocol could generate on the diversity of cultural expressions in the EU, in a sense, a "leap into the dark" is taken. In addition, a lack of transparency and sometimes faltering communication with stakeholders on proceedings in trade and economic negotiations with third parties have given rise to anxiety and confusion among stakeholders. This has led to suboptimal conditions for constructive debate and broadly supported and effective policy implementation. Moreover, the fact that many member states remained silent with regard to the protocol's negotiations may indicate a diminished interest in the process of implementing the UNESCO Convention.

In this respect, dialogue among decision makers and stakeholders must be improved – not only between the EU institutions, national levels and civil society, but also within member states (e.g., between trade and cultural ministries). The following policy recommendations can be considered for smoothening the EU's policy-making process of negotiating protocols on cultural cooperation. These recommendations may also be more generally relevant for cross-sectoral international negotiations of the EU.

Firstly, the EU's negotiating team responsible for protocols on cultural cooperation should be balanced and include more visibly and practically representatives from the cultural policy subsystem (e.g., DG EAC), with whom the cultural sector is more acquainted and connected. More support for the new practice could also be generated by a clear signal that prior ratification of the Convention will be a requirement for any cultural cooperation agreement or protocol to come into effect.

Secondly, protocols on cultural cooperation should be judged and evaluated on a case-by-case basis, taking into account the specificity of the third party and its relationship with the EU. This would also mean preliminary study and negotiations based on evidence. Although ex-ante study is difficult, the commitment to cultural diversity presupposes investment in evidence-based policies, which in turn would be authoritative tools to dispel or affirm the accuracy of long-held fears among cultural stakeholders. If the latter are serious in aiming for worldwide cultural diversity, they too should contribute along with EU institutions to more study, data gathering, and the refinement of definitions and concepts.

Thirdly, past negotiations on protocols have shown the value of debate among the European Commission, member state representatives and civil society. The stimulation of more and increasingly structured dialogue among these stakeholders is recommended. Transparency is essential in these processes. Because of the multilevel governance context in which the EU aims to implement the UNESCO Convention, the Commission should take the lead in timely communicating to stakeholders and enhancing the transparency of proceedings as much as possible. However, because of all the involved parties' commitment to implementing the UNESCO Convention, they equally have the responsibility to set up frameworks for deliberation and reflection. Member states ought to increase their efforts to formulate positions after internal dialogues (between relevant ministries and after consultation with civil society organizations and the professional sector) and communicate these in an equally timely way to its representatives who are in contact with negotiating teams.

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