



**International Network for Cultural Diversity  
Réseau international pour la diversité culturelle  
Red Internacional para la Diversidad Cultural**

## **WTO Trade Negotiations: Doha Development Agenda Threatens Cultural Diversity**

In 2001 in Doha, Qatar the World Trade Organization launched a comprehensive new round of trade negotiations, covering issues with potentially serious consequences for cultural policy in many countries. Failure to include language in the Ministerial Declaration acknowledging the importance of promoting cultural diversity will be significant in these negotiations. The ability of states to encourage and support their own artists and cultural producers is at risk in the WTO's "Doha Development Agenda."

The world's cultural community calls on all governments to refrain from making any commitments in trade talks that would restrict their ability to develop or maintain policies that promote cultural diversity, until such time as a new international treaty to provide a permanent legal foundation for such measures is implemented.

### **Background**

The International Network for Cultural Diversity (INCD) is a world wide network of artists and cultural groups dedicated to countering the corrosive effects of globalization on culture. The INCD represents individual artists, cultural activists, academics, organizations and creative industries. We come from all continents, sectors and disciplines of the cultural community, ranging from new media artists to traditional artisans. Organizations from 70 countries belong to the network. The Network is guided by our Statement of Principles and member decisions and is a democratic organization with an active Steering Committee of 14 individuals from 13 countries.

From our founding meeting in Santorini, Greece in September 2000, the INCD has been concerned about the effects of the trade agreements and has supported the development of a new legally binding Convention on Cultural Diversity.

### **Doha Ministerial Declaration**

The final Declaration is a ten-page document that assumes liberalized trade is positive for all, outlines an aggressive work program for the WTO and contemplates new negotiations in several key areas. The timetable is unrealistic as it directs negotiations to conclude "not later than 1 January 2005," although some of the negotiations are not set to begin until after the Fifth Session of the Ministerial Conference, being held in Cancun, Mexico in September 2003. Previous substantive rounds of negotiations have taken up to a decade to conclude.

## **Preamble**

There is reference in the preamble to a number of key social objectives, including sustainable development, protection of the environment, public health, core labour standards and protection of bio-diversity. But, there is no reference to the importance of promoting and maintaining cultural diversity. Given the broad scope of this round of negotiations, the absence is significant. Even the failed Seattle declaration contained language on cultural diversity, but there was no consideration of such language in Doha.

As a consequence, in the new round of talks, when trade negotiators make the final trade-offs to secure the deal, in what is considered to be a “single undertaking,” or a fully integrated round of negotiations, there is nothing in the official Declaration that can be used to ensure they will look at the potential consequences of decisions for global cultural diversity.

## **Ongoing Negotiating Agenda**

The Declaration outlines a revitalized work program in what has been called the “built-in agenda,” the matters left over from the Uruguay Round that have guided the WTO’s work in the past few years. Under the new work program, negotiations continue in several key fields.

## **General Agreement on Trade in Services (GATS)**

Negotiations are underway and required member countries to exchange “requests” for commitments by 30 June 2002 and initial “offers” in response by 31 March 2003. The cultural community has significant concerns about these negotiations:

- All forms of artistic expression are services as defined by the GATS. While countries may refrain from making commitments in these fields under the bottom-up approach to the talks, pressure can be applied bilaterally and multilaterally to seek such commitments.
- Several countries tabled comprehensive requests to other members, for full commitments in audiovisual and other cultural services sectors. The US is seeking a standstill provision in all audiovisual classifications, thus attempting to restrict the future policy making authority of governments. As it was in the Uruguay Round, audiovisual issues will be a major issue in the new round, and with more issues in play overall, the chances of a trade-off increase.
- Proposals on “horizontal issues” can also be anticipated. These are commitments that apply across all services, whether or not a country has agreed to include that sector in its general commitments. This means that such commitments would apply to audiovisual services, publishing, sound recording, visual arts, heritage institutions and other forms of expression even if these sectors are otherwise “exempt” from the disciplines.

## **Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)**

At the Doha meeting, this is one area in which nations from the developing world were able to make some progress. New language clarifies that the scope of authority provided by the TRIPS “emergency clause” includes responding to the public health pandemics, including AIDS, malaria and tuberculosis. There is also recognition of the importance of protecting traditional knowledge and folklore.

However, other key matters in TRIPS were not discussed, including the patenting of life forms and the minimal protections provided to individual creators. The cultural community also must consider a potentially serious element of the ongoing discussions:

- The TRIPS Council is set to conclude the “modalities” through which “non-violation” complaints can be adjudicated. A “non-violation complaint” is one in which a member country of the WTO can file a complaint against a measure maintained by another member that, while not technically a violation of the TRIPS, nonetheless “impairs” the benefits the other member would reasonably expect to receive. As a consequence of their ownership of copyright, multinational firms may well encourage their governments to challenge national cultural measures because these “impair” the benefits these firms “can reasonably expect” to enjoy under TRIPS provisions.

### **Electronic Commerce/Telecommunications**

Discussions on electronic commerce may well touch significant cultural issues. The US has urged that software be covered completely by the various WTO disciplines, effectively prohibiting imposition of regulatory measures and controls. The European Union responded that the content of many software products is cultural in nature and therefore should not be included as proposed. The US can be expected to argue that the transmission of cultural materials across computer networks is merely e-commerce that should be free of regulations.

Similarly, as convergence breaks down the distinctions between the various methods of distribution of cultural products, commitments made in telecom discussions, or discussions around the Internet could have profound implications for the cultural content carried. Decisions in these fields may preclude governments from introducing important policies and programs that ensure diversity of cultural content or media pluralism.

### **New Negotiating Agenda**

One of the key areas of dispute at the Doha meeting was the debate around the so-called Singapore issues, the new areas of negotiations demanded by the industrialized nations.

### **Investment**

From the perspective of the cultural community, perhaps the most significant single section of the Doha Declaration is entitled *Relationship Between Trade and Investment*. It states, “recognizing the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly foreign direct investment, ... we agree that negotiations will take place after the Fifth Session of the Ministerial Conference, on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.” While the Declaration does state that negotiations must take account of the “right” of governments to “regulate in the public interest,” this section essentially brings the dramatic rebirth of the failed Multilateral Agreement on Investment (MAI).

The Organization for Economic Cooperation and Development attempted to implement an investment treaty, but it failed in the face of significant opposition. The French government was among those to highlight the negative consequences on culture of the draft proposal. The cultural community mobilized against the proposed Agreement.

To the extent the outcome of the new WTO negotiations on investment approaches the agreement abandoned by the OECD in 1997, the results could be catastrophic for culture:

- An investment agreement could force a re-evaluation of a significant number of cultural policies, including: prohibitions, limits or restrictions on foreign ownership in the cultural industries; public service broadcasters and other public institutions, since these might be perceived as unfair competitors for private foreign investors; regulations that discriminate against foreign broadcasting or publishing interests; co-production treaties; even financial subsidy programs if these discriminate against foreign firms or individuals.
- Should the agreement include an investor-state dispute settlement system that permits individual firms to sue foreign governments, the potential for challenges by multinational firms in the entertainment business would be great.

### **Interaction Between Trade and Competition Policy**

This is another new issue to be negotiated after the upcoming Cancun meeting. While the negotiating agenda in this area is not yet clear, there are potential consequences for cultural policy:

- Competition policies are used to counter the dominant position of foreign firms in the domestic marketplace. More importantly, with convergence and technological change, these tools could become more significant in the future. If the ability to use competition policy as a cultural policy tool is restricted or compromised by the WTO agreement, an important mechanism to encourage indigenous artists and producers will be lost.

### **Government Procurement**

While the Declaration states “negotiations (on government procurement) shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preference to domestic supplies and suppliers,” it is useful to recall that TRIPS began as a simple anti-piracy measure. It is possible to create a scenario in which practices of the public service broadcasters and other public cultural and heritage institutions could be held to scrutiny under a WTO agreement on government procurement.

### **WTO Rules**

There is agreement to launch negotiations “aimed at clarifying and improving” agreements on subsidies and countervailing measures. Significantly, the negotiations will commence with an examination of “trade distorting practices.” The US maintains that cultural subsidies and other measures are “trade distorting,” and this may provide an avenue for them to pursue such a claim.

## **New International Instrument On Cultural Diversity**

The strategy of the cultural sector to seek the negotiation of a new global cultural pact has been given added urgency by this WTO Declaration. Given the scope of the new round of trade talks, we have only a few years remaining to implement an agreement that will be an effective buffer against potential trade retaliation for government measures that promote cultural diversity.

The proposed new instrument, or Convention on Cultural Diversity, would be a legally binding treaty that will:

1. Provide a legal foundation for government measures that support cultural diversity.
2. Include rules appropriate for the cultural sector, and encourage more balanced trade in cultural goods and services.
3. Be prospective and allow definitions of culture to change as artists create in newer media, and allow new measures to be implemented as they are required.
4. Ensure that disputes about the trade in cultural goods and services are adjudicated by cultural experts, under its terms, rather than by trade experts, under trade agreements.

While the news from the WTO is negative, recent news from Paris is more positive. As a result of the growing pressure from cultural sector representatives around the world, UNESCO's Director General will urge UNESCO to take on the task of implementing an international legal instrument on cultural diversity.

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Garry Neil, Coordinator