

UNESCO OVERWHELMINGLY APPROVES CULTURAL DIVERSITY TREATY

The UN Educational, Scientific and Cultural Organisation (UNESCO) voted overwhelmingly on 20 October to approve a new global convention for the protection of cultural diversity, in spite of staunch opposition from the US. Supporters of the treaty hailed it as a victory for free expression, claiming that it will help governments protect national cultural identities and traditions from the homogenising pressures of foreign competition. Opponents charged that it could curb free speech and serve as a pretext for arbitrary protectionism, particularly in the entertainment industry. However, the accord's implications for existing and future trade law remain far from clear.

The product of two years of sometimes acrimonious negotiations, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions received the support of 148 countries during the UNESCO General Assembly in Paris. Only the US and Israel voted against it. Australia, Honduras, Liberia and Nicaragua abstained. The convention will enter into force once ratified by 30 governments.

France and Canada, the treaty's sponsors, believe that its affirmation of countries' "sovereign right" to promote diversity in "cultural expressions" will give them ammunition to counter demands that they renounce the use of subsidies, quotas, and other measures to support domestic cultural products such as movies, broadcasting, and publications. Certain such measures are currently permissible under the so-called "cultural exception," the exemption of audiovisual goods and services from some trade disciplines, championed by France during the Uruguay Round.

Washington argues that governments could use the new convention to place limits on imports such as Hollywood movies and US-produced music and television programming. Louise Oliver, the US ambassador to UNESCO, has criticised the convention for being "open to misinterpretation," arguing that it threatens the free flow of ideas and could even be used to justify government censorship, particularly against ethnic minorities. The US also contends that governments could abuse the treaty to impose arbitrary trade restrictions on purported cultural grounds, say, on coffee, textiles, or foie gras.

The US' view, however, is not shared by most of its traditional allies. Even the UK, which had withdrawn from UNESCO alongside the US in 1984 (both subsequently rejoined the organisation), endorsed the convention wholeheartedly. The UK's ambassador to the summit, Timothy Craddock, proclaimed it "a great day for UNESCO" on behalf of the EU, saying that they had "agreed to disagree" with "one country" on the matter.

Trade effects unclear

Contradictory statements from different governments about how the treaty will affect existing and future trade agreements -- especially WTO rules on services, goods, and subsidies -- suggest that the picture is blurred (see [BRIDGES Weekly](#), 8 June 2005). This lack of clarity is embodied in Article 20 of the convention, which deals with its relationship to other treaties. Some countries have argued that the article's clause that "nothing in this convention shall be interpreted as modifying rights and obligations of the parties under any other treaties" means that the treaty will not take precedence over trade agreements including the WTO. However, the same article also stipulates that countries "shall take into account" the UNESCO treaty "when interpreting and applying the other treaties to which they are parties or when entering into other international obligations." France says that the latter clause bolsters the legal case of countries that are resisting pressure in future trade negotiations to open their cultural sectors to foreign imports.

Korean cultural organisations believe that the adoption of the accord will buttress the country's case for maintaining a quota system that requires cinemas to dedicate 40 percent of shows to domestically

produced films, according to the Korea Times. The US has been putting pressure on Korea to weaken the domestic content requirement as a prelude to bilateral trade and investment negotiations.

Other countries such as India, one of the world's biggest film exporters, have maintained that the convention pertains to culture, not trade.

Manon Ress, director of the Consumer Project on Technology's (CPTech) Information Society Project, described the convention's provisions with regard to future international trade agreements as "a safety valve at best," suggesting that it might be of use to countries such as France, Canada, and Korea, but perhaps not to smaller countries engaged in bilateral trade negotiations with the US.

Many trade analysts have suggested that the convention is more symbolic than anything else. They point to the treaty's weak dispute settlement provisions -- non-binding mediation and conciliation without any mechanism for sanctions -- as further evidence that the US's anxieties are overblown. CPTech's Ress said that the deal was certainly symbolic, but that it was also important, since it "pushed back the idea that anything comes under trade rules" and recognised that "there is some difference between cultural products and other goods."

US angry about process, will lobby against ratification elsewhere

The 28-odd amendments to the agreement proposed by the US were also rejected by the UNESCO's membership, although they did receive support from countries including Australia, Libya, and Rwanda. This came in spite of an all-out diplomatic offensive by Washington to modify the accord or delay its approval, including a letter from US Secretary of State Condoleezza Rice warning governments that the accord would "sow conflict rather than cooperation."

Nevertheless, US lobbying is thought to have significantly influenced the evolution of the convention, specifically with regard to its explicit link to existing treaties, which includes trade agreements. France and Canada had initially hoped to secure a wholesale exemption of cultural products from the WTO.

The US, for its part, has vowed to lobby countries to not ratify the deal, and to convince them not to seek its mention at the WTO's December Ministerial Conference in Hong Kong. In Rome for meetings with Italian counterparts, senior US State Department official Kristin Silverberg said "the biggest thing we can do is get countries to agree not to misuse [the UNESCO convention], that they not cite it in the Hong Kong talks in support of 'cultural exceptions.'"

The penultimate draft of the convention (the final version is not yet public) is available at <http://unesdoc.unesco.org/images/0014/001403/140318e.pdf>.

"Next lone U.S. dissent: Cultural diversity pact," INTERNATIONAL HERALD TRIBUNE, 12 October 2005; "UNESCO Adopts Cultural Diversity Pact," KOREA TIMES, 21 October 2005; "US 'Pulls Out All Stops' As UNESCO Backs Culture Treaty," INTELLECTUAL PROPERTY WATCH, 17 October 2005; "A Global Culture War Pits Protectionists Against Free Traders," NEW YORK TIMES, 5 February 2005; "Dimwitted Nod to 'Diversity,'" WASHINGTON POST, 12 October 2005; "A Thousand Flowers," OUTLOOK INDIA, 24 October 2005; "Unesco Adopts New Plan Against Cultural Invasion," NEW YORK TIMES, 21 October 2005; "Hollywood Lobbyist Concerned About Protectionism," REUTERS/HOLLYWOOD REPORTER, 23 October 2005; "UN to back France against US culture," THE AUSTRALIAN, 21 October 2005; "US isolated over cultural diversity," FINANCIAL TIMES, 19 October 2005; "US Stands Alone on Unesco Cultural Issue," NEW YORK TIMES, 13 October 2005; "General Conference adopts Convention on the protection and promotion of the diversity of cultural expressions," UNESCOPRESS, 20 October 2005; "US official heads to France for talks on UNESCO convention," AGENCE FRANCE PRESSE, 21 October 2005.