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**The thin red line.
International and European tensions between the
cultural and economic objectives and policies
towards the cultural industries**

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The thin red line.

International and European tensions between the cultural and economic objectives and policies towards the cultural industries

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The cultural industries are nowadays achieving a prominent and strategic position on the international policy agenda. Their cultural and economic ambivalence and their twofold value result in conflicting viewpoints opposing WTO, UNESCO and EU. Next to this opposition, the lack of a coherent international policy towards the cultural industries is also the result of the absence of an accepted common international description on the cultural industries as a whole, and to the existence of a lot of general and sectoral rules, agreements and policies in force which could be applied to the cultural industries as a whole or to one of its sectors. The article provides an adequate conceptual framework from where to initiate the debate on the establishment of an 'made-to-measure' international cultural industries policy. In doing so it contains, regarding WTO, UNESCO and EU, an overview; firstly, of the debate on and definition of the cultural industries; secondly, of the regulation applying to the cultural industries; and thirdly, the scope of and the contradictions between them. The article argues that the scope and the hierarchy of the rules and the agreements in force will be decisive for the international approach (whether economic or culturally oriented or both) of the cultural industries.

Key Words: cultural industries policy, economic approach of cultural policy, competition and culture, WTO (World Trade Organisation), UNESCO (United Nations Educational, Scientific and Cultural Organization), EU (European Union).

1. Introduction

Although much government debate on the cultural industries is going on, there's still no agreement on how to describe them, if only because the sector of the cultural industries is not straightforward. On one side, there is confusion of thought on which characteristics and sectors should be in- or excluded from the description. On the other side, the term itself is mixed up with or used as synonym of other concepts like creative, experience, leisure, content, knowledge and services industries. Most definitions of the cultural industries depend on and vary according to territorial and periodical circumstances. Due to its difficulty (taking into account local and national differences) and its limitations (a description can not keep in touch with reality), the relevance of a general description on the cultural industries at international and European policy level is questioned. Meanwhile, the sector of the cultural industries, which is highly but not wholly digitalised, is increasingly crossing periodical and territorial boundaries through fast changes and therefore surpassing local, national and even European legislation. Within this context, the need to constitute an international regulatory framework and a made-to-measure policy for the cultural industries is thus becoming inevitable.

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The cultural industries became a hype for different governments and policy institutions but the concept is used in multiple meanings. The ambivalence of the notion cultural industries is at the same time its weakness and its strength. On the one side, the notion makes it possible for policy agencies and governments at local, national, European and international level to fulfill the need to reconcile contradicting economic and social-cultural policy goals, which partly explains its succes. On the other side, it gives the appearance that governments and policy and policy institutions seem to be negotiating about the same phenomena but this appearance could be deceptive. Especially because the initial problem is related to the absence of an internationally accepted description, a 'made-to-measure' regulatory structure and tools for the cultural industries. Besides, there are actually a lot of existing general and sectoral rules, agreements and policies in force which could be applied to the cultural industries as a whole or to one of its sectors. Taking into account this threat, it doesn't surprise that there irrupt conflicting viewpoints and tensions on the international and European level.

This paper attempts to reveal those tensions between WTO, UNESCO and EU on the cultural and economic objectives of the cultural industries and its policy towards them. It commences with a set out of the characteristics and the nature of the debate on the cultural industries by the WTO, UNESCO and European Union. From a historically viewpoint (from 1945 until now), this article considers legislation in force that could be applicable to the cultural industries and other texts of the WTO, UNESCO and EU on the cultural industries. Then, it discusses the scope of WTO, UNESCO and EU rules and agreements in force for the cultural industries. Finally, this article considers the opposing viewpoints in those descriptions, objectives and policies. In doing so, we take a particular interest in the cultural industries as a global concept of different and distinct sectors. We define them as consisting of profit and non-profit organisations whose key activity is centralised around the symbolic meanings of their products (goods, services, experiences and hybrids). The proces of (re)production, circulation and consumption can, in different combinations, be mediated, live, large scale, medium-small scale, bounded to periodical and territorial boundaries or relatively time-place free. They could be a part of or maintain relations with global scale conglomerates. Cultural industries are characterised by both cultural and economical properties, contain a high degree of capital and are a risky business. This as a consequence of the unpredictable taste of the consumer (whether mass, niche, local, global). The risk is also due to the unsecure result of the complex labour processes of relative autonomous creative personal (artists and intermediaries) (Huijgh and Segers, 2005a: 141-42).

2. International and European status quo on cultural industries: description, debate and regulation in force

2.1. The cultural industries under the WTO: debate on services and vertical policy

With regard to the cultural industries, the main principles of the GATT (General Agreement on Tariffs and Trade, regulating the international trade in goods) GATS (General Agreement on Trade in Services, regulating the international trade in services), TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights, regulating the international trade in intellectual property) and WTO (World trade organisation covering GATT, GATS, TRIPS) and some trade related issues are highly important. Firstly, the 'National Treatment Principle' which means that imported and locally produced goods should be treated equally. This principle of giving others the same treatment as one's own national products is lead down in article III of GATT, article XVII of the GATS and article III of the TRIPS, but handled slightly different by each of them. This principle only applies once a product, service or item of intellectual property has entered the market. Secondly, the 'Most favoured nation' (MFN) which stands for the principle that every time a member state improves the benefits, it gives to one trading partner, it has to give the same "best" treatment to all other WTO members, so that they remain equal. This principle is integrated in the GATT (Article I), and a priority in the GATS (Article II) and TRIPS (Article IV),

although handled differently. Under strict conditions, some special temporary exceptions on the MFN principle have been allowed alongside the commitments for sufficiently economically integrated members like the European Union. Thirdly, one of the main objectives in all three agreements is free trade, with barriers progressively coming down through negotiation. Fourthly, the promotion of open and fair competition by discouraging "unfair" practices such as export subsidies and dumping products below cost price to gain market shares. This is clearly articulated in the GATS article XIII 'Government Procurement' and article XV 'Subsidies'. The article on subsidies states that members recognize that subsidies may have distortive effects on trade in services in certain circumstances. A similar idea is expressed in the TRIMS (Agreement on Trade-Related Investment Measures) and applies to any measure that affects trade in goods (in casu, local content requirements, trade-balancing requirements) and discriminates against foreigners or foreign products. The additional agreement SCM (Agreement on Subsidies and Countervailing Measures) also provides further elaboration on rules governing trade in goods and establishes three categories of subsidies for goods: prohibited, actionable and non-actionable. Subsidies that are based on export performance or on a company using domestic (rather than imported) goods are prohibited, while subsidies to assist in research and development or to help disadvantaged regions are excluded from the scope of the agreement. The WTO negotiations tend to draw more and more attention to those competition disturbing and distorting effects of government support (www.wto.org; www.unesco.org/culture; Bronckers, 1999: 547-66, de Witte, 2001: 243-44; Hoekman, Mavroidis, 2000: 540-41, Jackson, 2000: 86; Lal Das, 1998: 80; MC Donald, 1998: 244; Sampson, 1996: 24-5; Schulze, 2003: 269-76; Senti and Conlan, 1998: 4, WTO, 2001).

These main objectives, which run through the agreements, have already been indirectly applicable to the cultural industries as a whole or are directly in force to one of the sectors. All agreements apply vertically, which means that negotiations and commitments of the articles in the GATT, GATS, TRIPS, TRIMS and SCM have a different effect in every sector. Basically the GATT takes one sector of the cultural industries into account: the audiovisual one. During the Uruguay trade round much of the debate between the US and EU was going on whether to include or to exclude the audiovisual industries from the main principles of the GATT, in casu the EU was able to negotiate an exception from GATT's National Treatment article III for films (Braman, 1990: 375; de Witte, 2001: 238; Honeck, 2000: 141; Pauwels, Loisen, 2003: 293; Sapir, 1991: 61). The GATT no longer exists as an ad hoc organisation, but the GATT agreement lives on and is guarded by the WTO. It remains significant for other sectors of the cultural industries delivering goods or for sectors connected to the audiovisual industries by far-reaching sectoral convergences. Especially the provisions in the GATS and TRIPS seem to be significant for the cultural industries. While there is still no consensus among the WTO-members whether the products of the cultural industries can be interpreted as goods, there's no doubt about the cultural industries being part of the services sector (Beck, 2003; Caves, 2000; Girard, 1978, 1981; Hartley, 2005; Hesmondhalgh, 2002; Murdock, 2003; O'Connor, 2002; Pine, Gilmore, 1999; Throsby, 2003; Towse, 2002, 2003, 2004). However, there's no consensus whether the services of the cultural industries, the audiovisual and telecommunication sector in particular, are characterised by a cultural specificity and therefore should be withheld from the GATS (Barth, 1999: 6; Braman, 1990: 375; Honeck, 2000: 141; Pauwels and Loisen, 2003: 95-296; Tramier, 1993: 35). In a twofold way the GATS could be applicable to the cultural industries. As a part of the services industries the GATS could be enforced on the cultural industries as a global sector. But due to the vertical structure, the audiovisual and telecommunication industries are emphasized in the GATS. But in the EU no liberalisation commitments are made (Kennet, 1996: 136-48). Under the GATS, every country has the right to choose the sectors in which it wishes to make an offer of liberalization, and can also establish a list of specific commitments it wishes to make to provide foreigners access to its services market. However, drawing on the principle of transparency (article III of the GATS), the general obligations under the GATS will apply even if the country has made no specific commitment to give foreign companies access to its market. Beside this, intellectual property is mostly considered as the core of the cultural industries (Bettig, 2000; Hesmondhalgh, 2002; Throsby 2003; Towse, 2004; O'Connor, 2002). Therefore, the cultural industries (in the context of intellectual property also called 'content' or 'copyright' industries) are indirectly linked to the TRIPS but will be sectorally in force. One can conclude that the application of international trade rules on the cultural industries will mainly be developed under the provisions of the GATS and TRIPS and in the audiovisual and telecommunication sector. Since the turn of the century one can notice some changes in the vertical international trade approach of the cultural industries. As illustrated perfectly by the WTO-directives regarding the procedure of the Doha negotiations, the WTO commences to speak about the cultural industries as a global concept and as an important sector (WTO,

2001:2). Nevertheless, at this moment it argues that the cultural industries, and the mediated and digitalised sectors in particular, are a backdrop to forthcoming negotiations. The heterogeneous opinions of the members are often hard to reconcile and could break up further discussions as illustrated by the WTO ministerial conference in Seattle (decembre 1999) (Deselaers, Köning, 1999) and the Millennium Round. Nowadays the WTO tries to reach a consensus on the global trade talks, named for the Qatari capital (Doha), where it was launched in 2001. The world's trade ministers will meet in Hong Kong in december 2005 for what is widely seen as the final effort to save the Doha Round and the liberalization of the world trade in services (IPS, 20/10/2005). There's no way back to withhold the cultural industries as a global concept from international trade negotiations, if only because further liberalisation of the services sector is pending on the WTO agenda and several commitments between WTO members in some sectors have already been made. In spite of their membership, some WTO members did not share this economic approach of the cultural industries. Inspired by the UNESCO as the only UN system organization with responsibilities in the area of culture, several WTO members like France (through the EU Commission's mandate) and Canada (Canadian Government, 2005) did evoke the idea of cultural diversity in the preparatory phase of the WTO Seattle Ministerial in relation to goods and services to counter this economic approach (www.unesco.org).

2.2. UNESCO and the cultural industries

2.2.1. Cultural diversity discourse and worldwide networking of local cultural industries

In the preparatory phase of the WTO Seattle Ministerial, the concept cultural diversity gave expression to the idea of approaching cultural goods and services differently in international trade agreements that set them apart from standardised mass consumption or even exclude them from international trade. Cultural diversity was used in the context of human rights and described as 'the common heritage of humanity considered as necessary for human kind as biodiversity is for nature' (UN/UNESCO, 1995; UNESCO, CLT-2002/WS/09: 11; UNESCO, 19/11/2001: 1, www.unesco.org/culture). The cultural exception used by Canada and the EU to withhold cultural industries from the GATS (Barth, 1999: 67; Braman, 1990: 375; de Witte, 2001: 238; Honeck, 2000: 141; Pauwels and Loisen, 2003: 294-96) is just one of the possible means for achieving this objective of promoting cultural diversity. The UNESCO interpretes, from an optimistic viewpoint, local cultural industries as a new instrument that could preserve cultural diversity: 'they are knowledge and labour-intensive, create employment and wealth, nurture creativity - the "raw material" they are made from -, and foster innovation in production and commercialisation processes. At the same time, cultural industries are central in promoting and maintaining cultural diversity and in ensuring democratic access to culture' (www.unesco.org/culture). The UNESCO considers those local cultural industries extremely relevant to counterbalance the standardisation of culture as a result of the ongoing process of globalisation in the information society (UNESCO, 2001: 13; UNESCO, 19/11/2001: 1-3; UNESCO, 21-22/09/2000; UNESCO, 14-15/06/1999). In the Universal Declaration on Cultural Diversity, Koïchiro Matsuura, Director-General of UNESCO, describes the role of the cultural industries as to 'humanize cultural globalisation' (UNESCO, CLT-2002/WS/09:11). One of the idea's in this declaration is that cultural diversity as expressed through the local cultural industries can be a strong contributor to sustainable development. At the same time it underlines the concentration of the cultural industries in the hands of a few players that have advanced technical capacities for distributing and producing creative products. National policies ought to be able to counter these trends (UNESCO, 11/01/2002: 2; UNESCO, 29/09/2001: 1-3; UNESCO, 11-12/12/2000). Therefore article 9 (Cultural policies as catalysts of creativity) and 10 (Strengthening capacities for creation and dissemination worldwide) of the Universal Declaration on Cultural Diversity stress the fact that national cultural policies should develop operational support or appropriate regulations to establish local cultural industries that are viable and competitive at national and international level (UNESCO, CLT-2002/WS/09:14). Furthermore, objective 17 of this declaration stimulates UNESCO members to assist in the emergence or consolidation of the local cultural industries, in developing countries and countries in transition in particular. The first action line of the subprogramme (programme IV.3) for 2004-2005 and the medium-term strategy 2002-2007 of the UNESCO reflects the same idea (UNESCO, 2003; UNESCO, 2001). This philosophy of promoting cultural diversity by strengthening the capacities of local cultural industries, will

mainly be operationalised through Unesco's Global Alliance on Cultural Diversity (2002-2007) and the Creative Cities Network (2004+) (UNESCO, 05/2005; UNESCO, 2004:1-6, UNESCO, 11/2001: 2-3, UNESCO, 14/02/2002: 10; www.unesco.org/culture/alliance). These two initiatives, which fall mainly under the responsibility of the division Arts, Crafts and Design (CDS) and the division Cultural Enterprise and copyright (CEC), are created by networking worldwide national, local and cities governments with local cultural industries and private partners. Although those are being realised, some UNESCO members deemed it advisable to draw up a binding standard setting instrument on cultural diversity. Therefore at the end of 2004 a multi-stage approach was initiated to realize the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions (UNESCO, 2005: 32C/34, 33C/23). On the 20th of octobre 2005, 148 countries supported this convention and express their believe that mechanisms to maintain and develop domestic production are necessary because the diverse goods produced around the world are not simply merchandise, but expressions of rich individual uniqueness and cultural identities. The US and Israel voted against because they do not agree on the rights of countries to use possible cultural exceptions to stimulate their own cultural industries and on article 20 on the relationship of this new convention with other treaties. Therefore some observers at the UNESCO Convention are of the opinion that the US views cultural goods as mere merchandise, exactly the opposite view shared by most UNESCO members (IPS, 20/10/2005).

2.2.2. Changing definitions

Drawing on the somehow optimistic believe of UNESCO in the force of the cultural industries to realize and guarantee cultural diversity, one expects that this concept would be the core of UNESCO's description of cultural industries. Unlike this expectation, the definition of UNESCO draws the attention on three other central notions: creativity, copyright and commercialisation: 'this term applies to those industries that combine the creation, production and commercialisation of contents which are intangible and cultural in nature. These contents are typically protected by copyright and they can take the form of goods or services' (www.unesco.org/culture). Indirectly the sensitizing concepts in this description refer to cultural diversity. UNESCO considers creativity as the core of cultural diversity through cultural industries (UNESCO, 14/02/2002; UNESCO, 29/09/2001: 2-4; www.unesco.org/culture). Copyright protects and thus stimulates this creativity by rewarding it (UNESCO, 2001: 8-9; www.unesco.org/culture/copyright). One can notice that UNESCO focuses less on the notion of commercialisation than it did in its first definition of the cultural industries in 1982. This description seemed to be characterised by a one-sided emphasis on commercialisation and economical mechanisms (UNESCO, 1982: 8). Nowadays commercialisation still seems to be considered as a threat to creativity but at the same time it refers to the difficult balance of economic and cultural objectives in the cultural industries. Although UNESCO took a rosy view on it, during decennia it has been a pioneer in the thought on cultural industries as a global concept and a source of inspiration for several national and local authorities. Recently the institutions of the EU also seem to be inspired by UNESCO's viewpoint on cultural industries, especially when it concerns the WTO negotiations on international trade in cultural goods and services (European Parliament, 14/05/2005, 14/07/2003, 12/03/2003; European Council Culture, 15-16/11/2004: 35).

2.3. The cultural industries in connection with the European Union

2.3.1. Pragmatic debate

To the contrary of the UNESCO, the EU has only recently put the cultural industries as a global concept on the policy agenda. The growing interest for cultural industries at the DG (Directorate-General) employment of the European Commission did stimulate the debate amongst other committees of the institutions and advisory bodies of the European Union. The EU intervention in the cultural industries

mainly unfolds itself through a pragmatic discourses. From 1996 onwards the European Commission, DG employment, starts implementing the definition cultural industries as a global concept for different sectors. This DG underlines the economic potential of the cultural industries: investments in the cultural industries could improve the economy in general, employment in particular and therefore European competition (European Commission 20/11/1996: 10, 14/05/1998: 2, 32). A few years ago, the opinion group on creative industries, on the demand of the DG culture of the European Commission drew also the attention to the cultural advantages of a future European cultural industrial policy. According to this opinion group, cultural industries can strengthen the European cultural diversity and preserve European citizen's access to culture. Nevertheless, this opinion group also stresses the economic benefits of a cultural industries policy: cultural industries are able to provide jobs, create welfare and export European culture (European Commission, 28-29/01/2004: 1-3). The European Council and the European Parliament maintain a similar discourses to underpin the European intervention in the sector of the cultural industries. In first instance, they stress the importance of the cultural industries for job creation and economic growth. In second instance, the role of the cultural industries in the promotion of cultural diversity is mentioned (European Parliament, 12/03/2003: 2-7, 20-4, 12/03/2003: 1-3, 11/04/2003: 2-14, 22/04/2003, 18/06/2003: 1-3, 14/07/2003: 6-13, 04/09/2003; European Council, 23-24/03/2000: 2-3; European Council Culture, 23/11/1999: 4-5, 23/11/2000: 6-9, 21/06/2001: 7, 5/11/2001: 9, 23/05/2002: 4-6, 11-12/11/2002: 9,14-5). Drawing on such an optimistic description of the cultural industries, the European Council of ministers on culture is convinced that cultural industries can contribute to the realisation of the objectives laid down in the Lisbon strategy: European growth and cohesion. This idea is articulated in the action plan of 2005-2006 of the European Council of ministers on culture. With this action plan the ministers of culture are obliged to present a recommendation concerning further measures for the cultural industries (including the audiovisual sector) in their member states by mid 2006 to the European Council, in accordance with article 151§4 of the Treaty in order to enhance the contribution of this sector to the realisation of the Lisbon objectives (European Council, 16/11/2004: 3). The intervention of the European Union in the cultural industries is consequently legitimised by pragmatic arguments like the economic potential and the cultural advantages of a European cultural industries policy. Although this discourse in favour of an EU intervention in the sector of the cultural industries sounds very optimistic, the cultural industries add few things to the existing cultural objectives of the European Union (Gordon and Mundi, 2001). They seem to be no more than a new instrument to improve the European competition and to stimulate the European cultural identity with respect for the cultural identities of its member states and regions.

2.3.2. Blurring descriptions

This pragmatic debate is blurred by the use of the concepts cultural industries, creative industries and culturally related industries through one another in different contexts by the EU institutions. Within the EU institutions there exists a false consensus about the cultural industries. By using the same terminology the institutions supposedly understand the same phenomena. But in reality they haven't made clear the content of the concept cultural industries. Very often they do not choose to 'contain' the concept cultural industries in a clear definition. This conceptual indistinctness poses a major problem for the European Union's future intervention in the sector of the cultural industries. The institutions are well aware of this obstacle. In their documents they often refer to the need to come up with a coherent identical definition of the cultural industries. It seems as if the EU institutions put the responsibility on the others. Thus, the European Parliament doesn't want to formulate a definition for the cultural industries in its 'own initiative' (European Parliament, 12/05/2003, 22/04/2003, 14/07/2003). But in its resolution of the 4th of september 2003 on the cultural industries the Parliament requests the European Commission to come up with a definition (European Parliament, 04/09/2003: point (1)). Meanwhile the European Commission's opinion group on cultural industries stresses that it did opt for not defining the cultural industries (European Commission, 28-29/01/2004: 1). The lack of a clear definition implies that the EU institutions make policy, based on a complex matrix of contradicting visions and existing laws that can be applicable to the cultural industries. The future definition will depend on the vision regarding cultural industries in the different departments of the EU institutions. In this regard the DG's charged with cultural policy will differ from those responsible for employment, trade and competition. The definition of cultural industries (whether they are considered as cultural or economical services or both) can have crucial consequences for

the European Commission's evaluation of state aid attributed by Member States. Presumably the definition of cultural industries will be based on a sector by sector approach and shaped on an ad hoc basis. Although the definition and the use of the concept cultural industries and its related concepts by the European institutions are at this moment rather confusing and incoherent, we can also find some common characteristics. The EU institutions apply the concept cultural industries mainly to the traditional arts sectors enlarged with the so-called popular forms and with the art and culture derived from new technological developments. The end of the public broadcasters monopoly and the traditional arts monopoly made it possible to enlarge the conventional arts concept to the cultural industries. The EU focuses on the audiovisual industries. This emphasis was stimulated by the EU's position in the WTO (GATT, GATS, TRIPS) with regard to their liberalisation. The interest for other cultural industries still has to be developed. On the basis of this conceptual fluidity one can expect that the actual incoherences in European policy making will increase in the future. Especially because there is no overall and general binding policy for the cultural industries.

2.3.3. Amalgam of policies

One can however not say that the EU didn't develop a policy towards the cultural industries. The EU has been profiling itself for decades on a policy and attitude towards the audiovisual (and later on the telecommunication) sector as part of the cultural industries. Those sectors are especially envisaged when it comes to the establishment of a policy or support programmes for the cultural industries. The website of the European Commission illustrates this very clearly. At first instance it seems to be a site on the cultural industries as a global concept, but very soon it becomes clear that this site concerns support programmes (Innovation 2000, Media Plus and e-Content) and existing rules for the mediated and digitalised ones (www.europa.eu.int/comm/culture/action/indus_en.htm). The difference in dynamics and the impact of technology have made the European Parliament propose a cultural industries policy on the basis of a variety of strategies. This variety of strategies and the related renovating, flexible and adopted instruments must enhance competition of the EU's cultural industries (European Parliament, 12/03/2003:20-4).

Next to the audiovisual and telecommunication rules and agreements, the EU has at its disposal a diversified policy framework to deal with the cultural industries: cultural, competition, employment, regional and development policies. Such a new policy should stimulate small scale cultural industries and regulate big scale cultural industries. In order to regulate and to stimulate at the same time, the European Commission, the European Parliament and the European Council draw the attention to the importance of competition law for the cultural industries. On the one side, they mainly want to create a competitive friendly climate for cultural industries. Thereby they focus on stimulating SME's in the services sector by providing exceptions on competition law (European Council Culture, 15-16/11/2004: 30; European Parliament, 14/07/2003: 9-13, 18/06/03: 1-3, 12/03/03: 04; European Commission, 28-29/01: 2-3, 14/05/1998: 16-7, 23-24/03/2000: 6-8; www.europa.eu.int/comm/culture/action/indus.htm). In casu, exemptions on state aid (article 87) and the state aid procedure (article 88). State aid is usually considered as incompatible with the common market when it distorts competition by favouring certain undertakings or the production of certain goods (Cini and MC Gowen, 1998: 135-60; Frazer, 1995: 3-19; Lehner, 1991: 70-6; Ross, 2000: 401-23; Stuart, 1996: 226-39; Winter, 1993: 311-29). But the European Commission, DG competition in particular, and the Court of Justice have both a broad interpretation of the concept 'state aid' or the way to grant state aid. Financial support to SME's in the sector of the cultural industries can be justified when it is (1) promoting economic development of areas with an abnormally standard of living or serious underemployment, (2) it is facilitating the development of certain economic activities of certain economic areas, (3) it is promoting culture and heritage conservation (www.europa.eu.int.scadplus/leg). In several EU documents one can discover a consensus on the fact that small and medium scale cultural industries need support because they contribute to employment, the improvement of regional economies or cultural objectives (European Parliament, 14/07/2003: 9-13, 18/06/2003: 1-3; European Council, 23-24/03/2000: 6,8; European Council Culture, 13/11/1999: 4-5; European Commission, 14/05/1998: 16-7). In 2004, the European opinion group on cultural industries therefore proposed to elaborate specific measures for the cultural industries (European Commission, 28-29/01/2004: 2-3). There's also an exemption for SME's to report state aid to the European competition Commission (Hancher, 1994: 134-50; Lavdas and Menindrou, 1995: 171-201; Struys, 1993: 17-38; www.europa.eu.int.scadplus/leg).

On the other side, they want to regulate big scale industries in the sector of the cultural industries. This can be realised by the competition rules on restrictive practices (article 81) and abuse of dominant position

(article 82) in particular. While the application and the subsequent procedure of article 82 on cultural industries remains exceptional, article 81 regulating convergence is often in force in so far as the convergence of telecommunication, media and internet industries results into a dominant position on the market (Aubel-Antoine, 1998: 1-8; Goldberg, Prosser and Verhulst, 1998: 88-93, Pauwels and Cincera, 2001). It is also worth mentioning that especially paragraph 3 of article 81 plays a major role in stimulating SME's in the sector of the cultural industries. By this paragraph the DG competition of the European Commission seems to take into account their public service value, in casu when contributing to improving the production of distribution of goods or to promoting technical or economical progress, while allowing consumers a fair share of the resulting benefit (Cini and Mc Gowen, 1998: 60-96; Fitzpatrick, 1995; www.europa.eu.int.scadplus/leg). The article on the public sector and the utilities (article 86) of the competition policy also takes the public service value into consideration. But due to internal contradictions between the three paragraphs of this article the application is not straightforward. Cultural industries can -depending on the services rendered- be subjected to paragraph 1 (concerning respect for the common market), paragraph 2 (exceptions when the undertakings are entrusted with the operation of services of general economic interest) and paragraph 3 (which enhance liberalisation)(www.europa.eu.int.scadplus/leg; Deringer, 1995: 133; Dony, 1996; Gardner, 1995: 78-86). The question arises whether the DG competition considers certain cultural industries as delivering services of common economical interest or not. The documents of the European Parliament, European Commission and European Council do not leave any doubt about the fact that cultural industries contribute to the global economic and cultural interests (European Commission, 28-29/01/2004: 1, 14/05/1998: 2; European Parliament, 14/07/2003: 12-3, 18/06/03: 1-3, 12/03/2003: 1-3; European Council, 15-16/11/2004: 30, 11-12/11/2002: 14-5, 13/11/1999: 4-5) Besides this, one never mentions explicitly whether the cultural industries are considered as an economic service or a service of global cultural interest. This adjective makes a distinction between the cultural industries that call on the exception of this competition law in the public sector and utilities and those that don't. Due to the lack of consensus on the concept cultural industries the EU institutions seem not to be able to adjust their policies to apply the existing laws to the cultural industries.

3. Conclusion: sensible tensions

The preceding overview shows that the WTO, UNESCO and WTO are not exactly in line regarding the description, objectives and policies towards the cultural industries. Various interpretations of the concept cultural industries largely guide the polemic surrounding it. To conclude, we take a better look at the main opposing viewpoints which could pose problems for an international policy towards the cultural industries. When reading between the lines one can also forecast some trends in the future international cultural industries policy.

First of all, one can reduce the European and international polemic on the cultural industries to the traditional contradiction between 'culture' and 'economy'. In the context of the cultural industries this tension seems to be an actual one.

At an international level, the WTO stresses the economical aspects of the cultural industries. The most important aspect is the economical surplus value and the regulation of certain cultural industries under the international trade rules, in particular the trade in services and intellectual property. The economic impact of the cultural industries explains the difficult EU negotiations within the WTO on the liberalisation of the services market. It also explains the enduring resistance of the EU towards the liberalisation of the services and some sectors of the cultural industries in particular. The UNESCO on the contrary defends the cultural approach and wishes to handle cultural industries under the Universal Declaration on Cultural Diversity (article 9, 10 and objective 17) and the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions. While the WTO doesn't take into account authors rights in the TRIPS (excluding article 6 of the Bern Convention) and therefore withholds the cultural approach of intellectual property, they are very well the core of UNESCO's policy and are applied by the EU. The European Parliament has recently underlined the importance of a close co-operation between the EU and the UNESCO. It asks the European Commission to support the UNESCO and its Universal Declaration on Cultural Diversity, to adhere to its philosophy and to counterbalance further liberalisation of the cultural

industries through the GATS. But one must not forget the crucial differences in their approach towards cultural industries. For the UNESCO the cultural diversity is the starting-point by excellence, whereas the EU uses it as a mere reference without emphasizing it. These different viewpoints on the same topic have their logical roots in the final objectives of the respective institutions. But the ambivalent composition of the cultural industries (at the same time cultural and economic characteristics) leads to the fading out of the borders between both. The WTO, the UNESCO and the EU take into account cultural goods and services of the cultural industries that are protected by intellectual property. Thus the UNESCO increasingly cares about international trade in services and both the economical and cultural surplus value, while the WTO takes into account intellectual property. Although the approach and desired regulation of this common purpose remains polarised.

At the institutional level of the European Union, the cultural industries are even more balancing between cultural and economical objectives and policies. The European Commission, the European Parliament and the European Council judge the cultural industries (1) by article 151 (cultural) on the one side and article 157 (economic) on the other side and (2) by the cultural exceptions provided in the competition policy on the one hand and the competition rules on the other hand. The competition law has clearly been articulated around the antagonism between 'economy/industry' and 'culture/creativity'. However, one can question whether the exceptions in favor of state support really harm the competition policy because they have to be in line with the broader policy framework regarding the Common Market. Eventually, the DG competition of the European Commission and the Court of Justice limit the operating area of the cultural industries by their control *ex ante* and *ex post* bearing in mind the interest of the Common Market. The EU makes in its laws a distinction between measures with a cultural objective and measures that serve goals with a mixed economic and cultural character. In the first case, one applies article 151 and in the second case, the other treaty articles are applied. The cultural industries balance between these articles, whereby article 157 refers to the economic aspect and article 151 to the cultural aspect. It remains a fact that the EU by considering these two articles, mainly focuses on the economic unification and thereby making cultural policy considerations subordinated to them. But the committee on culture of the European Parliament and the European Council of ministers on culture are mainly in favour of applying the cultural paragraph (artikel 151§4) of the Maastricht Treaty. The idea of a European cultural policy with respect of the cultural identity and the autonomy of the Member States was the basis to include a cultural paragraph in the Treaty of Maastricht. The European Council of ministers on culture and the committee on culture of the European Parliament insist on treating the cultural industries under the fourth paragraph. They wish to influence the policy and the attitude towards cultural industries as much as possible in order to have an 'active European cultural policy'. Such a cultural policy cannot ignore the economic aspects of development and competition of cultural industries. The same European Council of ministers on culture and the committee on culture of the European Parliament legitimize their actions towards the cultural industries on the basis of the Lisbon strategy that mainly puts forward economic objectives. Meanwhile the committee on competition of the European Parliament, the European Commission, DG competition and the European Council on competition have until now paid little attention to the cultural industries as a global concept. Their interest is limited to the few case law that verifies the respect of the existing competition regulation framework by the cultural industries and the national authorities.

Secondly, the disagreement between the cultural and economic approach of the cultural industries have major consequences for the attitude towards state intervention and government support. All the institutions reject protectionist measures regarding cultural industries, but they do so in a different way. WTO's interpretation of protectionism is linked to the acceptance of state aid. GATS article XIII 'Government Procurement' and article XV 'Subsidies', the TRIMS and the additional agreement SCM (Agreement on Subsidies and Countervailing Measures) are some of the measures to avoid any distortion or influence on international competition. A similar idea of state support is articulated in the European Union's competition law, in casu the articles on state aid as mentioned above. There is a contrast between the committee on culture of the European Parliament, the DG culture of the European Commission and the Council of ministers on Culture who are pleading for support to the cultural industries and the Lisbon Council, the DG competition of the European Commission who want to reduce state intervention and wish to move towards a further liberalisation of the market. The support for cultural industries and its acceptance and encouragement will be subject to a difficult balancing exercise and will depend on the balance of power between the EU institutions. It is worth mentioning that the few case law (European Commission, XS 21 /2003, N 5 /2004, XT 61 /2002, XS 58 /2003) already discerns a number of

tendencies in the EU's attitude regarding state aid to cultural industries. On the basis of the exceptions for SME's, the European Commission, DG competition declared all these cases in accordance with the Common Market and treated them under the category services. Furthermore, about the use of the existing funds to stimulate the cultural industries, there also exists confusion between the institutions of the EU. The European Parliament's committee on culture stipulates that most of the existing cultural funds cannot be used to support cultural industries and that the overwhelming part of the cultural industries have nothing in common with the existing system of state subsidies. While in documents of the European Commission one mentions the exception for cultural industries with regard to competition law based on article 87,§3 sub d (exception from competition law regarding state aid when they serve cultural objectives). Beside this, the EU gives the impression it is creating new actions in favour of the cultural industries but the structural (ERDF: article 10, ESF: article 1, 2, 5b, objective 3, 4, EMPLOYMENT and ADAPT, LEDIs, EIB, EIF) and project oriented European support initiatives (Culture 2000, Media Plus/Media Training, EQUAL, LEADER, INTERREG, URBAN) (Brown, 2001: 73-103) do not add something new to the already existing ones for the sectors belonging to the cultural industries. In contrast, the UNESCO's Global Alliance (2001) and Creative Cities Network (2004) were recently set up to stimulate co-operation between private undertakings and national governments to support local cultural industries. According to the UNESCO, cultural industries shouldn't be submitted to protectionist measures like quota and is in that regard sharing the WTO's viewpoint. But UNESCO is in favour of public subsidies and a stimulating policy of different authorities towards the cultural industries. Not all types of cultural industries are envisaged when they concern support policies and programmes. Like the EU, the UNESCO focuses on the stimulation of medium and small scale and cultural industries. The EU's policy regarding cultural industries will mainly be elaborated on the basis of the existing SME's regulatory framework. The reason to stimulate those cultural industries is somewhat different from the UNESCO: not cultural diversity, but European growth and cohesion as starting-point.

Thirdly, it is very likely that the discussions about the approach and the support for cultural industries will take shape at two levels: under the regulatory framework on services and in the capacity of the mediated and digitalised cultural industries. The rules of the international trade in services are laid down in the GATS and already in force for certain cultural industries, the mediated and digitalised industries in particular. The EU institutions agree that cultural industries are services. It's not clear whether they consider them as cultural or economical services or both. Especially the draft resolution of the European Parliament on cultural industries urges to hold on to the conclusions with regard to services. It also emphasizes the EU resistance to further liberalisations of the services by the GATS (Wheeler, 2000: 53-68). This viewpoint does however not seem to correlate with the European services directive which is applicable to the cultural industries. Only public services without economic counter-value are excepted by the services directive. The purpose of the directive is to lift the obstacles for the free circulation of services (European Council, 10/01/2005, Van Lancker and Gekien, 24/9/2004). UNESCO however draws the attention on the fact that it is difficult to define the trade in services. How the different international and European rules on services will be applicable on the cultural industries remains unclear. But it became clear that the WTO, the UNESCO and the EU do recognize the importance of the diversity of those services. In the case of the WTO, it is illustrated by the GATS annex ('all services are not the same'). In the case of the UNESCO this diversity is an objective in itself which is illustrated by the 'Declaration on Cultural Diversity' (2001) and the 'Protection of Diversity of Cultural Contents and Artistic Expressions' (2005) and above all by UNESCO's 'Constitute Act'. Despite this common acknowledgement on the diversity of services, there doesn't exist a common definition, neither a system of standardisation to describe the trade in cultural services. There is also a different opinion on the nature of certain digitalised cultural industries (online available books and movies) and whether they should be considered as virtual goods or rather as services (www.unesco.org/culture). One can also predict that the debate and policy regarding the cultural industries will take place from a vertical approach of the mediated and digitalised sectors. Due to the vertical structure of the agreements (sector per sector), the WTO and EU mainly make a policy for the mediated and digitalised industries. No policy regarding cultural industries as a global concept has been developed yet. Especially the audiovisual and later on the telecommunication sector has always been the stumbling-block of the EU and US at the GATT, GATS, TRIPS and WTO negotiations. The convergence between traditional and new media is subject to further attempts to liberalize all the mediated and digitalised industries (Pauwels, Loisen, 2003: 296). Therefore even more than the UNESCO, the EU (the European Lisbon Council in particular) stresses the importance of stimulating the information society and the telecommunication industries. But those

initiatives in favour of European mediated and digitalised industries could be interpreted by other WTO members (in casu the US) as contravening the GATT and GATS provisions. However, the increasing convergence between the formerly distinct sectors changes nothing to the future vertical policy approach of the cultural industries.

Finally, the scope and the hierarchy of the rules and the agreements as described above will be decisive. The GATT, GATS and TRIPS are binding for the WTO members. Some of those WTO members are at the same time members of the EU and the UNESCO. But due to the WTO's vertical approach, a commitment in one sector of the cultural industries doesn't immediately affect the others. The fact that one sector of the cultural industries falls under GATT, GATS and TRIPS doesn't directly implicate commitments on liberalisation for the cultural industries as a global concept. Unlike the WTO that places the cultural industries as a global and important sector on its agenda, the culturally oriented UNESCO, supported by the EU, counterbalances this economic approach of the cultural industries. Unfortunately, when UNESCO's commitments are ratified, they are not binding but only imply an engagement concerning further operationalisation. At the UNESCO Convention on the Protection of Cultural Diversity it became clear that some UNESCO members, the US in particular, gave the impression that trade agreements would always prevail. In particular, there was a lot of fuss about article 20 which deals with the relationship to other treaties; mutual supportiveness, complementary and non-subordination (UNESCO, 2005, 33C/23/Annex V: 11). The US proposal to submit two amendments on article 20 (they would make any measure to protect cultural diversity in the treaty irrelevant if there were in conflict with obligations from other treaties) for subsequent consideration by the General Conference failed to win support. The US then made a formal objection to the text of the article adopted (UNESCO, 2005, 33C/23: 15). During the Convention debates the US delegation argued that because cultural goods are also an object of international trade, the UN agency does not have the authority to establish global binding rules on the matter. In Richard Martin's (co-head of the U.S. delegation at the UNESCO-debate) words "This convention is actually about trade and clearly exceeds the mandate of UNESCO... and could impair rights and obligations under other international agreements and adversely impact prospects for successful completion of the Doha Development Round negotiations." Despite the strong US opposition, the cultural diversity convention draft steadily gained support, including from countries that earlier in the UNESCO discussions had appeared to side with the United States against it. The adoption of this convention seems to be for several reasons mainly a moral victory. Firstly, the convention's call for cultural exception on the trade dogma implies that on a juridical level the international trade watch dog WTO must recognize it, which seems not easy to obtain. Besides, the WTO's legal structure will remain the sole valid framework for resolving disputes concerning trade questions on cultural goods and services. Secondly, the convention, though approved by 30 states, will not be applicable to the rights and obligations contracted by countries under bilateral or multilateral trade agreements. Besides, developing countries must resist US pressure to commit their audiovisual services and information services during trade negotiations. Thirdly, there are several back-gates to opt-out from the convention like the so-called Indian clause (allows for non-ratifying countries to ignore the validity of the convention) (IPS 20/10/2005). In spite of this weakness, the convention (a French-Canadian initiative) is seen as a triumph for developing and European countries in the struggle to preserve their unique cultural identities. But to fully preserve their cultural identities, European countries are also confronted with the Common Market framework. At European Union level the scope of policies is partly ruled by the principle of subsidiarity (article 5, second paragraph). This article of the Treaty deals with the question whether cultural industries are subject to policies of the Member States, EU or both (Cass, 1994: 1107-36; De Burca, 1998: 217-36; Palacio Gonzalez, 1995: 355-70; Feral, 1998: 95-118; Langrish, 1998:3-19; Petite, 1997: 17-52, Silvestro, 1997: 662-64). Indirectly the European Commission and the European Parliament refer to the application of this principle to the cultural industries by focusing on the respect for the cultural identity of the Member States. Even so, the subsidiarity principle will not always be valid for there are other EU sectoral directives and rules that are directly binding for certain cultural industries, the audiovisual and telecommunication industries in particular. There's also the competition policy that - by its dominant position in the hierarchy of EU laws and its financial conditions- limits the scope of national, local policy with regard to the cultural industries. Local and national policies regarding cultural industries have to respect the European law framework.

The cultural industries are at the same considered local, national, European and international which poses problems in the hierarchy of the rules, agreements and policies applied to the cultural industries. International and European initiatives and decisions have broad effects which are mainly felt on the local

level. Therefore it is important to understand the future international policy regarding cultural industries starting from its possible operationalisation on a local level. Besides, the forthcoming debate on how to regulate the cultural industries at a European and an international level should not only surmount the local-global but also the cultural–economical paradox if only because they are no longer polarised through the concept and the reality of the cultural industries sector. But the introduction of the concept cultural industries (as a ‘*contradictio in terminis*’) in international and European policy seems to force the issue.

References

- Aubel-Antione, M. (1998) 'L'application du droit communautaire de la concurrence et la controle des concentrations et des alliances dans l'audiovisuel', *Cahiers juridiques et Fiscaux du Centre Français du commerce Extérieur* 10:1-8.
- Barth (1999) *The prospects of International Trade in Services*. Bonn: Freidrich Ebert Foundation.
- Braman, S. (1990) 'Trade and information policy', *Media Culture and Society*, 12: 361-85
- Beck, A. (2003) *Understanding the cultural industries*. London: Routledge.
- Bettig, R.V. (1996) *Copyrighting Culture: The Political Economy of Intellectual Property*. Critical Studies in Communication and in the Cultural Industries. Boulder, Colorado: Westview Press.
- Bronckers, M.C. (1999) 'Better Rules for a new Millennium: A warning Against Undemocratic Developments in the WTO', *Journal of International Economic Law* 2(4): 547-66.
- Brown, G. (2001) 'European Funding', pp. 73-103 in S. Selwood, *The UK Cultural Sector*. London: PSI.
- Canadian Government, Department of Foreign Affairs and International Trade (2005) 'Cultural exemptions in Canada's major International Trade Agreements and Investment Relationships', Ottawa.
- Caves, R.E. (2000) *Creative Industries*. Cambridge: Harvard University Press.
- Cass, D.Z. (1992) 'The word that saves Maastricht? The principle of subsidiarity and the division of powers within the European Community', *Common Market Law Review* 29: 1107-136.
- Cini, M. and L. Mc Gowan (1998) *Competition Policy in the European Union*. US: ST Martin's Press.
- De Burca, G. (1998) 'The Principle of Subsidiarity and the Court of Justice as an institutional actor', *Journal of Common Market Studies* 6:217-36.
- Deringer, A. (1995) 'The interpretation of article 90 of the E.E.C. Treaty', *CML Review* 5: 129-38.
- Deselaers, W. and M. Köning (1999) 'The WTO Millenium Round and the Audiovisual Sector', *International Trade Law and Regulation* 5(6):147-54.
- de Witte, B (2001) *Trade in Culture: international Legal Regimes and EU constitutional Values*, pp. 237-25 in G. De Burca and J. Scott (eds.) *The EU and the WTO. Legal land constitutional Issues*. Oxford: Hart Publishing.
- European Commission (28-29/01/2004) 'the Opinion on the European Creative Industry, The creative industries in Europe', Brussels.
- European Commission (14/05/1998) 'Commission Staff Working Paper. Culture, the cultural industries and employment', Brussels, SEC (98)837.
- European Commission (20/11/1996) 'Communication from the commission to the council, the European parliament, the economic and social committee and the committee of the regions. Cohesion policy and culture: a contribution to employment', Brussels, COM(96)512 final.
- European Commission, DG Competition (XS 21 /2003) 'Developing the Creative Industries in Coventry through Business Support 2002-2006'
- European Commission, DG Competition (N 5 /2004) 'Greater London High- Technology Seed and Creative Industries Funds'

European Commission, DG Competition (XT 61 /2002) 'Learning skills council creative industries training'.

European Commission, DG Competition (XS 58 /2003) 'Be 'There - Cultural Industries Supply Chain'.

European Parliament (14/05/2005) 'European Parliament Resolution on Working towards a Convention on the protection of the diversity of cultural content and artistic expression', P6_TA-PROV(2005)0135, Brussels.

European Parliament, Committee on Culture, Youth, Education, Media and Sport, (4/09/03) 'European Parliament Resolution on cultural industries', Brussels.

European Parliament (18/06/03) 'Committee on Industry, External Trade, Research and Energy, Opinion on cultural industries', Brussels.

European Parliament, Committee on Culture, Youth, Education, Media and Sport (14/07/03) 'Report on cultural industries', final, A5-0276/2003, Brussels.

European Parliament, Committee on Culture, Youth, Education, Media and Sport (22/04/03) 'Public hearing on Cultural industries in Europe', Brussels.

European Parliament, Committee on Culture, Youth, Education, Media and Sport (11/04/03) 'Final Report on the Questionnaire on Cultural Industries. Part I: executive Summary and operators, Part II: Charts', PE 312.578, Brussels.

European Parliament, Committee on Culture, Youth, Education, Media and Sport (12/03/03) 'Working document on cultural industries', DT/494991EN, Brussels.

European Parliament (12/03/2003) 'European Parliament resolution on the General Agreement on Trade in Services (GATS) within the WTO, including cultural diversity', P5-TAPROV (2003)0087, Brussels.

European Council of Ministers on Education, Youth and Culture (15-16/11/2004) '2221st Council Meeting', 14380/04 (Presse 310), Brussels.

European Council of Ministers on Education, Youth and Culture (11-12/11/2002) '2461st Council Meeting', 13747/02 (Presse 340), Brussels.

European Council of Ministers on Culture/Audiovisual Affairs (23/05/2002) '2427st Council Meeting', 8846/1/02 (Presse 140), Brussels.

European Council of Ministers on Culture (5/11/2001) '2381st Council Meeting', 13126/01 (Presse 377), Brussels.

European Council of Ministers on Culture (21/06/2001) '2361st Council Meeting', 9755/01 (Presse 233), Brussels.

European Council of Ministers on Culture/Audiovisual Affairs (23/11/2000) '2311st Council Meeting', 13437/00 (Presse 442), Brussels.

European Council of Ministers on Culture/Audiovisual Affairs (23/11/1999), '2221st Council meeting', 13152/99 (Presse 363), Brussels.

European Union, Council of the European Union (10/01/2005) 'Interinstitutional file Proposal for a directive of the European Parliament and the council on services in the internal market', 2004/2001 (CO1), Brussels.

European Union, Council of the European Union (23-24/03/2000) 'Presidency Conclusions Lisbon European Council'.

Feral, P.A. (1998) 'Le principe de subsidiarité: progrès ou status quo après le traité d'Amsterdam', *Revue du marché Unique Européen* 5: 95-118.

Fitzpatrick, E (1995) 'Articles 85 and 86: Control of Restrictive Practices and Abuses of Dominant Positions' in: L. Davidson, E. Fitzpatrick and D. Johnson *The European Competitive Environment*. Oxford: Butterworth-Heinemann.

Frazer, T. (1995) 'The new structural funds, state aids and interventions on the Single Market', *European Competition Law Review* 20(1): 3-19.

Gardner, A. (1995) 'The Velvet Revolution: Article 90 and the Triumph of the Free Market in Europe's Regulated Sectors', *European Competition Law Review* 2: 78-86.

Girard, A. (1978) 'Industries culturelles', *Futuribles* 17: 598-605.

Girard, A. (1981) 'A commentary: Policy and the Arts: the Forgotten Cultural Industries', *Journal of cultural economics* 5(1): 61-8.

Goldberg, D., Prosser, T. and S. Verhulst (1998) *EC media law and policy*. UK: Longman.

Gordon, C. and S. Mundy (2001) *European Perspectives on Cultural Policy*. Paris: Culture, Development and society Series, UNESCO Publishing.

Hancher, L. (1994) 'State Aids and Judicial Control in the European Community', *European Competition Law Review* 3: 134 -50.

Hartley, J. (2005) *Creative Industries*. Malden: Blackwell Publishing.

Hesmondhalgh, D. (2002) *The Cultural Industries*. London: Sage.

Hoekman, B.M. and P.C. Mavroidis (2000) 'WTO Dispute Settlement, Transparency and Surveillance', *The World Economy* 23(4): 527-42.

Huijgh, E. and K. Segers (2005a) 'Creative Capital. Towards a cultural industries policy for Flanders', Report for the Flemish Community, Brussels, University of Brussels

Honeck, D. (2000) 'Audiovisual Services', pp. 133-51 in WTO Secretariat (ed.) *Guide to the GATS: an overview of issues for further liberalisation of trade in services*. London: Kluwer.

International Press Services, 20/10/2005, *Unesco Convention to Protect Cultural Diversity – WHO* at <http://www.ipsnews.net/news.asp?idnews=3D30714>.

Jackson, J.H. (2000) 'Dispute Settlement and the WTO: Emerging Problems', pp. 67-81 in: WTO Secretariat (ed.) *From GATT to the WTO: The Multilateral Trading System in the New Millennium*. The Hague: Kluwer Law International.

Kennett, W. (1996) 'The European Community and the General Agreement on Trade in Services', pp. 136-48 in: N. Emiliou and D. O'Keefe *The European Union and World Trade Law*. Chichester: John Wiley and Sons.

Lal Das, B. (1998) *The WTO agreements: deficiencies, imbalances and required changes*. London/New York: Zed Books Limited.

Langrish, S. (1998) 'The Treaty of Amsterdam: selected highlights', *European Law Review* 3(2): 275-94.

- Lavdas, K. and M. Menindrou (1995) 'Competition policy and institutional politics in the European Community: State Aid Control', *European Journal of Political Research* 28(2): 171-201.
- Lehner, S. (1991) 'Fair competition in the internal market: community State aid policy', *European Economy* 48: 70-6.
- Mc Donald, B. (1998) *The World Trading System: the Uruguay Round and beyond*. Houndmills: MacMillan Press.
- Murdock, G. (2003) 'Back to Work', pp. 15-35 in A. Beck *Understanding the cultural industries*. London: Routledge.
- O'Connor, J. (2001) 'Public and private in the cultural industries, and O' Connor J. (2001) 'The Definition of Cultural Industries' at www.mmu.ac.uk/h-ss/mipc.
- Palacio Gonzalez, J. (1995) 'The Principle of Subsidiarity', *European Law Review* 24: 355-70.
- Pauwels, C. and J. Loisen (2003) 'The WTO and the Audiovisual Sector. Economic Free Trade US Cultural Horse Trading?', *European Journal of Communication* 18(3): 291-313.
- Pauwels, C. and P. Cincera (2001) 'Concentration and Competition Policies: toward a precarious balance within the global audiovisual' in L. D'Haenens and F. Saeys *Western broadcasting and the Dawn of the 21 ste Century*. Berlin: Mouton De Gruyter Publishers.
- Gilmore, H. and B.J. Pine (1999) *The Experience Economy: Goods and services are no longer enough*. Boston/Massachusetts: Harvard Business School Press.
- Petite, M (1997) 'Le traité d'Amsterdam: ambition et réalisme', *Revue du Marché Unique Européen* 4: 17-52.
- Ross, M. (2000) 'State Aids en National Courts: definitions and other problems', *Common Market Law Review* 6: 401-23.
- Sampson, C.I. (1996) 'Liberalisation of Trade in Telecommunications Services and the implementation of GATS/WTO for Developing Countries', *Intermedia* 24(5): 19-30.
- Sapir, A. (1991) 'Le Commerce international des services audiovisuels. Une source de conflit entre la Communauté Européenne et les Etts-Unis', pp. 163-70 in G. Vandersanden (ed.) *L'espace audiovisuel Européen*. Bruxelles: Edition de L'Université de Bruxelles.
- Schulze, G. (2003) 'International Trade', pp. 269-76 in: R. Towse, *A Handbook of Cultural Economics*. Cheltenham/UK: Edward Elgar.
- Senti, R. and P. Conlan (1998) *WTO Regulation of World Trade after the Uruguay Round*. Zürich: Schulthess Polygraphischer Verlag.
- Silvestro, M. (1997) 'Le traité d'Amsterdam: une évaluation critique', *Revue du Marché Commun et de l'Union Européenne* 24: 662-64.
- Stuart, E.G. (1996) 'Recent Developments in EU Law and Policy on State Aids', *European Competition Law Review* 4: 226-39.
- Struys, M.L. (1993) 'Quelques choisies de procédure en matière d'aides d'état', *Revue trimestrielle de droit européenne* 29 (1): 17-38.
- Throsby, D. (2003) *Economics and Culture. Cultural industries*. Cambridge: University Press.

Towse, R. (2003) 'Cultural Industries', pp. 170-77 in: R. Towse A Handbook of Cultural Economics. Cheltenham/ UK: Edward Elgar.

Towse, R. (2004) Copyright in the Cultural Industries. UK: Edward Elgar.

UNESCO (23/08/2005) 'Preliminary Report by the Director-General accompanied by the Preliminary Draft of a Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions', (33C/23), Paris.

UNESCO (2005a) 'Protection of diversity of cultural Contents and artistic expressions', Resolution 32C/34, Paris.

UNESCO (2005b) 'Global Alliance for Cultural Diversity', Progress Report, Paris.

UNESCO (2004) 'Creative cities Network', Guidelines, Paris.

UNESCO (2003) 'Extracts from UNESCO's Draft Programme 2004-2005, Scenario major Programme IV, General Conference', Thirty-second Session, Paris.

UNESCO (2002) 'UNESCO Declaration on cultural diversity', introduction Koïchiro Matsuura', (CLT-2002/WS/09), Paris.

UNESCO (14/02/2002) 'Presentation to the European Union Group', Paris.

UNESCO (19/11/2001) 'Koïchiro Matsuura, Director-General of UNESCO, International Conference on Cultural Industries and New Information Technologies', Strasbourg.

UNESCO (29/09/2001) 'Speech, Guiomar Alonso, Arts and Cultural Enterprise Division', Paris.

UNESCO, (11/2001) 'The Global Alliance for Cultural Diversity, Sustaining diversity through cultural goods and services', Paris.

UNESCO (2001a) 'Milagros del Corral Director, Book and Copyright Division, Approach to Cultural Industries in the Information Society', Paris.

UNESCO (2001b) 'UNESCO's Medium Term Strategy 2002-2007', Paris.

UNESCO (21-22/09/2000) 'Meeting of the Experts Committee on the Strengthening of UNESCO's role in promoting Cultural Diversity in the context of Globalization', Paris.

UNESCO (11-12/12/2000) 'Declaration on cultural diversity, Roundtable of Minister of Culture on 2000-2010 Cultural Diversity: Challenges of the Marketplace', Paris.

UNESCO (2000) 'Study on International Flows of Cultural Goods between 1980-98', Paris.

UNESCO (14-15/06/1999) 'Symposium of experts on Culture, the Market and Globalization', Paris.

UNESCO/UN (1995) 'Our Creative Diversity', Report of the UN/UNESCO World Commission on Culture and Development, Paris.

UNESCO (1982) 'Cultural Industries - A challenge for the future of culture', Paris.

UNESCO (18/09/1979) 'Berne Convention for the Protection of Literary and Artistic Works', Bern.

Van Lancker, A and W. Gekien (24/9/2004) 'Towards a European Directive on services in the internal market. Analysing the legal repercussions of the draft services directive and its impact on National Services regulation', KUL, Institute for European Law.

Wheeler, M (2000) 'Research Note: the 'Undeclared War' Part II. The European Union's Consultation Process for the New Round of the General Agreement on Trading Services/ World Trade Organization on Audiovisual Services', *European Journal of Communication* 15(2): 53-78.

Winter, J.A (1993) 'Supervision of state aid: article 93 in the Court of Justice', *Common Market Law Review* 35: 311-29.

WTO (11/2001) 'Doha WTO Ministerial 2001: trade in services' The work programme and the current negotiations, Qatar.

www.wto.org

www.unesco.org/culture

www.unesco.org/culture/alliance

www.europa.eu.int/comm/culture/action/indus_htm