The Trade Dimension of Cultural Industries

RAMESH CHAITOO
Services Trade Specialist, CRNM
rchaitoo@sunbeach.net

IX Encuentro Internacional de Economistas Sobre Globalización y Problemas del Desarrollo
Havana, February 5-9, 2007
"Creative industries" include the recording industry; music and theatre production; the motion picture industry; music/magazine publishing; book, journal and newspaper publishing; the computer software industry; photography; commercial art; and the radio, television and cable broadcasting industries. (UNCTAD)
Global Market for Cultural Goods & Services

- Price Waterhouse Coopers estimated global market value of creative industries at **US$1.3 trillion** in 2005 (from $831 billion in 2000):
  - **North America** - 43.5% (USA- $523 bill; Canada - $23 bill)
  - **Europe, Mid East, Africa** - $450 bill
  - **Asia** - $229 bill
  - **Latin America** - $32 bill

- Globally, creative industries forecast to grow by 10% annually over next decade.
Contribution of cultural products & services

- Trade in “core cultural goods” increased from US$38 billion to $60 billion over 1994-2002 (UNESCO)
- **United Kingdom** - in 2004 - 8% of gross value added, employed 1.8 million people, accounted for £11.6 billion in exports or 4% of all goods & services exported by UK.
- **USA** - 2003 - 6% of GDP; employing 4.7 million people; exports of copy-right based industries amounted to $89 billion according to IIPA report
- The US, Japan, UK, Germany, France and China account for the majority of global cultural goods and services trade (imports and exports).
- **Statistics Canada** - the value of cultural services trade exports increased by 81%, from $1.45 billion in 1996 to over $2.63 billion in 2002.
Developing countries

Despite rich, diverse creativity and talent, developing countries are marginal players in trade in cultural products and services.

In 2004 - UNCTAD estimated that developing countries accounted for only 3% of global market for paintings and 4% for sculptures.
Cultural Production is Different

- Expensive to produce & market world-class cultural products & services (e.g. audio visual)
- Success in Canada and EU – based on *substantial* state support.
- But some DCs have managed with little.
- Small size is a handicap; but creativity is not limited by size of firm but business skills lacking.
- Caribbean governments need to invest more in cultural industries; need innovative incentives.
Is it in developing countries’ interest to exclude trade in cultural goods and services from multilateral trade rules?


Small states need to develop cultural industries but lack investment base.
Challenges

- Disconnect between the South where an incredible pool of talent and cultural expression exists AND control over the marketing & distribution infrastructure for cultural products and services
- Relatively poor countries have very creative people (music & entertainment) - Cuba, Haiti, Jamaica
- But concentration in global music industry
- Concentration in global film and media
- How to ensure that benefits accrue to societies from which artists emerge?
Globalization means less firms in “Cultural Industries”

- Time Warner AOL; Universal Vivendi
- Sony BMG merger approved by European Commission
- But challenged by IMPALA (independents) in European Court of Justice; ECJ ruled that too much concentration in the music distribution industry would be not in the public’s interest.
- Internet is helping “revolutionize” distribution & allowing space for small players.
Common Lessons?

Technology has little to do with 'capitalization'

- Initial investments in MP3.com & Napster are 'laughable' in view of the level of participation by both content owners (in case of MP3.com) and consumers.

- Barrier to exploiting technology is not capitalization, but the ability to enable all stakeholders - content owner/producers on the one hand and consumers on the other - to develop new ways to interact and transact.
CD Baby.com
Distribution network for independents
• 74,863 artists
• 1,260,078 CDs sold by 2004
• $10,157,363.23 paid to artists
• retain $4 per CD
• non-exclusivity

• Also MusicDish Network
The Impact of Trade and Technology on Caribbean Creative Industries

CD Baby

- 74,863 artists
- 1,260,078 CDs sold
- $10,157,363.23 paid to artists
- retain $4 per CD
- non-exclusivity

October 27, 2004

Eric Fontenay
Key elements of Convention

- Art. 8 - Parties may take measures to protect & preserve cultural expressions.
- Art. 12 - endeavour to promote international cooperation on culture.
- Art. 20 - “Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.”
- Art 21 - International Fund for Cultural Diversity.
Globalization & Culture

Do WTO rules prevent a state from implementing cultural policies?

Not really. States are free to do as they wish. They can liberalize cultural services only if it is in their interest and they can impose conditions for market access.

The real problem is not the WTO but lack of investment in cultural industries in developing countries & inadequate government support;

Related challenge is technological changes which now make some government control difficult.
Canadian restrictions in Cultural Industries

While any foreign investment in a cultural industry is reviewed and may be denied, the ownership restrictions apply with particular force in book publishing and new investments in film distribution. The rules regarding broadcasting licenses permit foreign ownership to a maximum of 46.7 percent.
BUT IS CULTURE SPECIAL?

- Very value-laden
- Tied up with nationalism and identity
- But in a globalized economy to preserve and promote culture you have to sell it
- If not, dominant economies will present their culture since they own the means of disseminating cultural expression
- They also are the creators of the technology for such (ICT)
WTO Exceptions for “culture”

- No special treatment for cultural goods & services but GATT Art. IV has special exception for “cinematographic films.”
- GATT Art XX - exception for protection of “artistic, historic and archaeological treasures” since 1949.
GATS & “Cultural” Services

2. Communication Services
   D. Audio-visual services
   a. Motion picture and video tape production and distribution services
   b. Motion picture projection service
   c. Radio and television services
   d. Radio and television transmission services
   e. Sound recording
   f. Other
Cultural Services (Cont’d)

10. Recreational, Cultural and Sporting Services (other than audio-visual services)
   A. Entertainment services (including theatre, live bands and circus services)
   B. News agency services
   C. Libraries, archives, museums and other cultural services
   D. Sporting and other recreational services
   E. Other
Modes of Supply:

1. Cross border trade - satellite TV
2. Consumption Abroad – concerts for tourists in Cbbean
3. Commercial Presence – set up recording studio in Santo Domingo
4. Temporary Entry/Movement of Natural persons – travel overseas to perform in concerts and get paid.

In today’s world (1) depends on technology (2) is easiest for developing countries (DCs); But (3) is high cost and firms are too small in DCs; (4) is constrained by immigration issues but DCs can greatly increase their cultural services exports through this mode
Allowed Restrictions on Market Access (Art. XVI) under GATS

Allows one-time limitations on:

- **number of service suppliers:**
  - License requirement, subject to an economic needs test, to open a new radio or TV station

- **total value of service transactions or assets:**
  - Limit on amount of firms in any cultural sector

- **total number of service operations or on the total quantity of service output:**
  - Limit on the broadcasting time allocated to foreign movies
Market Access (cont’d.)

- Total number of natural persons:
  - Requirement that a local musician is used for every foreign musician in a concert

- Types of legal entity or joint venture:
  - Stipulate branch, subsidiary, etc.

- Participation of foreign capital:
  - Limits on foreign shareholding, Canada, France, etc.
Allowed Limits on National Treatment (Art. XVII) under GATS

- No less favourable treatment to foreign service suppliers and services provided, unless any discriminatory conditions and qualifications are set out in national Schedule of specific commitments.

- Examples of limitations on national treatment
  - Preference given to domestic audiovisual services firms in the allocation of radio frequencies for the national territory
  - Foreigners required to obtain a special work permit to work in the entertainment sector; may have to meet economic needs test.
Typical Barriers to Trade in Cultural Goods and Services

- **Tariff barriers** (e.g. custom duties on CDs. But low in OECD - 6% US; 6% Canada; 9% EU)
- **Other tax barriers** - VAT
- **Withholding tax** on revenues from live performances
- **Non-tariff measures** (e.g. practice barriers such as screen quotas)
- **Investment barriers** (e.g. restriction or limitation of foreign capital or equity participation, control of the nationality of company directors, or restriction on the repatriation of capital).
Other Barriers

- Work permit or visa requirements – unclear, cumbersome, time-consuming
- Requirements such as licensing by industry associations – for Theatre in UK you must comply with EQUITY rules
WTO Rules & Cultural Policy

- Current rules allow governments room to protect cultural interests;
- Most WTO Members (especially OECD states) have subsidies for cultural industries;
- Domestic content requirements; local screen times; local music quotas on radio;
- But if you open a sector, conditions should be scheduled in GATS commitments;
- Policies re preservation of cultural identity are NOT incompatible with current trade rules.
Cultural Industries in CARICOM

- Jamaican music industry employs about 15,000 people and accounts for 15-20% of the US$300 million in reggae music sales (Nurse, 2002).
- The music industry in Barbados is estimated to earn about US$15 million and in the Eastern Caribbean music accounts for about US$20 million.
- The CI sector makes a valuable contribution to the Caribbean economy but goes largely undocumented.
- Consequently, the sector has suffered from neglect in government economic policy formulation throughout the region.
Policy responses by DCs

- Cultural policy framework
- Recognize & appreciate cultural industries
- Support industries
- Ensure they get efficient platforms
- Input costs to the sector
- Ensure they get proper market access in rich countries
- Trade not only protect
CARICOM Objectives re Cultural Goods & Services

- Create and facilitate opportunities for Caribbean business in creative industries (performing and lyrical arts, music & entertainment sectors, publishing, A-V, etc.) to contribute to investment, employment generation and wealth creation;

- Market access in OECD & other countries is very important.
Support for local artists

Improve access of cultural industries to existing media.

Align trade policy with telecoms and broadcast media policy.

Source funding for audio-visual production.

Encourage co-production and collaborations in media productions.
Access to media is vital to business development in the sector. “Consumers buy what they see, hear and read in the media”.

Regional content in the print, radio and audiovisual media is low relative to the quantum of cultural content produced across Caribbean.

The goal should be to make local & regional content more accessible to media houses to expand contribution of cultural industries to Caribbean identity formation.

Protection of Intellectual property issues
Negotiating Objectives

- Reduce any current barriers to export of Caricom cultural goods and services;
- Restrictions on temporary entry - work permit requirements & procedures
- Restrictions on investment – e.g., set up radio station in Toronto to play Caribbean music; set up radio station or magazine/newspaper targeted to Caribbean audience.
- Reduction of tariffs on cultural products – CDs, crafts
- Reduction of constraints to export of live performances (domestic requirements)
Linkages are key

- For creative industries to grow we need efficient “other” services
- Trade negotiations may help you in some respects - liberalization leads to cheaper telecoms and broadband (Internet is new platform for distributing cultural products and services)
- ICT is critical - but most developing countries have inadequate infrastructure and wrong policies
Caribbean Position

- No formal regional policy position on culture-trade issue as yet;
- But most CARICOM states have opened Entertainment Services in GATS/WTO (with limitations);
- All CARICOM states need investment in cultural industries;
- Domestic capital base is inadequate;
- Financial services industry too conservative;
- Convergence of media and ICT is important for marketing cultural products & services.
UNESCO & Cultural Diversity

Constitution on the Protection of the Diversity of Cultural Expressions

Overall aims and objectives of the Convention are laudable and such Convention can be supported.

BUT small states must ensure that this initiative does not result in restrictions on market access for their cultural exports of goods & services in big countries.
UNESCO Convention

- Generally affirmed that pre-eminence of the cultural value of cultural products over their economic value would be underscored;
- Demand that cultural goods and services from developing countries receive special treatment.
- May affect WTO obligations, even if indirectly.
UNESCO Convention

- Agreed that a non-exhaustive list of cultural goods and services would be included;
- Disagreement re obligations arising from Convention on state parties at the international level;
- Some experts think Convention should expressly allow countries to derogate from existing commitments in international agreements if exercise of these rights would threaten or cause serious damage to cultural diversity - No agreement on this issue