

## TTIP and the cultural exception

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The concept of "cultural exception" (or exemption) was introduced by France in the General Agreement on Tariffs and Trade (GATT) negotiations in 1993. The idea is that culture should be treated differently from other commercial products, and that cultural goods and services should be left out of international treaties and agreements. The goal is to protect and promote domestic artists and other elements of domestic culture, which in practice translates into protectionist measures limiting the diffusion of foreign artistic work (via quotas, e.g. [French television channels](#)) or into subventions to the cultural sector, e.g. [cinema](#). The EP [adopted a resolution](#) asking for cultural and audiovisual services, including online ones, to be excluded from the TTIP negotiating mandate on 23 May 2013. On 14 June 2013 the Council agreed that audiovisual services would not be covered in the mandate, but this could be subject to revision.

The EU has a legal obligation under the [2005 UNESCO Convention](#) (which the US has [not signed](#)) to protect and promote the diversity of cultural expressions, a principle also enshrined in the EU Treaties ([art. 167 TFEU](#)). Moreover, in relation to trade agreements, individual member states have a veto in areas related to culture and the audiovisual sector if an agreement threatens "cultural and linguistic diversity" ([art. 207 TFEU](#)).

According to the Commission, the negotiations on the TTIP will not interfere with the Audiovisual Media Services Directive (AVMS), which contains measures to promote European audiovisual content both for broadcasting services and video-on-demand services. They will not interfere either with other instruments such as: "public subsidies, financing obligations for broadcasters, taxes on film tickets, co-production agreements, linguistic policy measures, the functioning of channels invested with a public service remit, the existence of stockholding caps in channels and networks, intellectual property rights or specific social-security systems" ([Commissioner Vassiliou's speech of 17 May 2013](#)).

The Transatlantic Trade and Investment Partnership's seventh round of negotiations is expected to take place in Washington in September 2014 (further information on the Commission's [TTIP website](#)).

See also:

- other TTIP related [EPRS products under the "International Trade" policy area](#)
- [The AVMS Directive: implementation and future perspectives](#) Keysource (March 2014)
- [Application of the Audiovisual Media Services Directive](#) Briefing (May 2013)

### Overviews

[Trading culture for TTIP?](#) / Deutsche Welle, 15 July 2014.

TTIP has so far kept its distance from the cultural sector. These five FAQs explain why.

[The Cultural Exception vs TTIP](#) / Federation of European Film Directors, July 2013. newsletter pp 1-2.

Gives the timeline of events and summarises positions.

[Transatlantic Trade and Investment Partnership \(TTIP\) Negotiations](#) / Congressional Research Service, February 2014 ("Audiovisual services" p. 16).

[The Transatlantic Trade and Investment Partnership \(TTIP\)](#) / House of Commons Library Standard Note: SN/EP/6688 19.2. 2014. ("Potential sticking points and controversies" p. 5)

These two notes summarise the controversy over the inclusion of cultural exceptions.

### Analysis

[The Return of the Cultural Exception and its Impact on International Agreements](#) / Marlen Bartsch in *Global Media Journal* Vol. 4, No. 1, Spring/Summer 2014.

This essay examines the influence of the French concept of the "cultural exception" on European media policy and international agreements. After briefly reviewing the historical background of the cultural exception in France, the essay describes how demands for the cultural exception and those for diversity affect inter-/transnational agreements within the European Union and around the world. Special focus is placed on the current EU/US Transatlantic Trade and Investment Partnership Agreement (TTIP) negotiations that nearly failed because of France's insistence that media and culture be exempted.

[El TTIP y la cultura: algunas notas provisionales](#) / Ángel Badillo, Elcano Royal Institute of International and Strategic Studies Working Paper 7/2014 (August 2014)

[A comparative analysis of audio-visual services in selected US and Japanese regional trade agreements: lessons for the European Union](#) / Bregt Natens, Leuven Centre for Global Governance Studies and the Institute for International Law (KU Leuven), April 2014.

This paper defines the scope of the cultural exception, the audio-visual services sector and how it relates to the cultural exception. It addresses some relevant issues in EU trade policy and how a Regional Trade Agreement may restrict regulatory autonomy in the audio-visual services sector. It then analyses the American and Japanese offensive successes and the counterparties' defensive attainments in their respective RTAs with Canada and Korea, and Switzerland and India.

[In between Curious Economics and l'exception culturelle: Implications of TAFTA | TTIP for the Cultural Sector](#) / Future Challenges, February 2014.

This article reviews the culture and trade debate and explains the economic characteristics of cultural products, sometimes called "curious economics" because it is difficult to express the intangible value of cultural products in monetary terms.

[Recent Evolution of The European Union's Audiovisual Policy](#) / Harvey B. Feigenbaum, Professor of Political Science and International Affairs, George Washington University. Paper prepared for the International Conference on Public Policy, Grenoble, France, June 26-28, 2013.

*" When it comes to audiovisual policy and the regulation of the media, the conflict among the EU's member-states is not so much structural as ideological. The conflicts over regulatory policy reflect the economic policy philosophies that to varying degrees divide Europe: neoliberalism versus dirigisme."*

[Audio-visual Services: International Trade and Cultural Policy?](#) / Gillian Doyle, Asian Development Bank Institute Working Paper 355, January 2012.

This study reviews the main forces driving patterns of trade in the audiovisual sector and identifies key issues that may potentially impact on trade liberalization and open markets. It also considers how open markets can be reconciled with cultural objectives which are an intrinsic aspect of the audiovisual sector.

A critical analysis of US cultural policy in the global film market: Nation-states and FTAs. / Jin, Dal Yong, International Communication Gazette. Dec2011, Vol. 73 Issue 8, p651-669. 19p.

By emphasizing contextualization between the film industry and government cultural policies in association with FTAs, this article historically examines the set of social relations and the interplay of power between the US and other countries (mainly non-western), as well as between the commercial interests of Hollywood and the critical political ideology of domestic film industries. It analyses whether the US, supported and lobbied by Hollywood, has hampered cultural diversity and sovereignty in other countries, particularly through the use of FTAs in the midst of neoliberal globalization. The article maps out how the US government has intensified its state power in the global cultural market. It articulates the consequences of FTAs in the realm of culture in several countries in order to determine the crucial influence of FTAs on domestic film and cultural markets. It is not an easy task to establish an exact correlation between FTAs and the deleterious consequences of signing FTAs for domestic film industries, therefore, the article discusses the more general, causal relationship between FTAs and consequences in domestic film industries

## EU institutions

**EP**  
[EP resolution of 23 May 2014 on EU trade and investment negotiations with the United States of America](#) Rapporteur: Vital Moreira.

MEPs asked for cultural and audiovisual services, including online ones, to be excluded from the negotiating mandate, in order to protect the cultural and linguistic diversity of EU countries (381 votes to 191, with 17 abstentions).

See also: EP Press release [EU/US trade talks: keep Parliament on board, MEPs warn](#) 23.5.2014.

## European Commission

[TTIP and Culture / DG Trade](#) (July 2014).

*" The TTIP negotiating mandate the EU Member States gave the European Commission expressly excluded the opening of the European audiovisual sector to competition from US firms. This means the Commission is not allowed to negotiate commitments in the sector and that TTIP will clearly exclude audiovisual services from any provisions granting access to EU markets ."*

## European Trade Commissioner Karel De Gucht

[Speech](#) at CDU Wirtschaftsrat Economic Conference, 3.7.2014: " *It is out of the question that TTIP will affect Germany's rich cultural diversity or policies. Neither public support for theatres, operas, film production, or public radio and television, nor Germany's system of fixed prices for books will be subject of negotiation in TTIP. These issues are simply not being discussed at all in TTIP.* "

[Remarks on the TTIP](#) at Plenary debate of the European Parliament on the Transatlantic Trade and Investment Partnership/ Strasbourg, 22.5.13: " *The EU and the Member State measures in support of their audio-visual sector can be maintained and will not be subject to negotiations. The EU and the Member States will retain the policy space to promote cultural diversity, for example, through subsidies, tax incentives etc. This will of course also include the development of new instruments to finance cultural works. This applies, in particular, to cinema and public broadcasting. [...]We believe that a full-scale exclusion of audiovisual services from EU commitments in the TTIP negotiations is neither necessary nor justified.* "

## President of the Commission José Manuel Barroso

[European Official Takes On the French](#) / New York Times 16.6.13 " *The European Commission president, José Manuel Barroso, speaking in an interview ahead of a meeting Monday with President Obama and other leaders of the Group of 8 industrial nations, offered strikingly robust criticism of efforts in France to limit the scope of a trade pact.* "

[Le Président Barroso rassure les cinéastes européens sur la protection de la culture dans les négociations avec les Etats-Unis](#) . Memo/13/537. European Commission. 11/06/2013.

## Council

Foreign Affairs-Trade Council Meeting of 14 June 2013 [EU-US Trade relations](#) : " *The Council agreed that audiovisual services will not be covered in the mandate, but that the Commission will have the opportunity to make recommendations on additional negotiating mandates.* " p. 6 of press release.

Education, Youth, Culture and Sport Council Meeting of 20-21 May 2013 [Transatlantic Trade and Investment Partnership Agreement](#) : " *A number of member states reiterated their total opposition to the inclusion of audiovisual sector into the TTIP negotiations, recalling that this was crucial for cultural diversity and in particular for the European film industry and creative sector.* " p.22 of press release.

## Stakeholder views

### National views

[Kultur in Gefahr](#) / Deutsche Welle 14 July 2014.

Cultural sector workers in Germany feel culture in Europe is threatened by the trade negotiations between Europe and the USA.

[La France, fer de lance de l'exception culturelle face au marché libre?](#) / Aurélie Filippetti, French Culture Minister *Le Monde* 13.6.2013. Letter in which she reaffirms France's position on the cultural exception and warns against " *letting culture go to the blind laws of the market* ".

[The cultural exception: France is not alone!](#) / French Department of Culture, 14 May 2013

" *In the letter [to the Irish EU presidency and to the European Commission], 14 European states, representing the vast majority of the EU's population, unequivocally demand, through their culture ministers, that "the EU's constantly-reaffirmed position – which, both at the World Trade Organization and in bilateral negotiations, has always excluded audiovisual services from any commitment to trade liberalization – should be fully maintained. (...) It is a complete policy of the EU and its member states and it would be compromised if the exclusion we demand were not guaranteed. (...) More broadly, the same is true for our ability to choose and enact our legislation and regulation in the face of technological and economic changes.* "

[US warns EU against exempting film industry from trade talks](#) / Peter Spiegel, *Financial Times* 11 June 2013.

The US government has warned Brussels that EU efforts to placate French demands to exempt its film industry from high-profile transatlantic trade talks could unleash a torrent of demands in Washington for similar reciprocal carve-outs that would imperil a comprehensive deal.

### Audiovisual sector

[EU/US Trade negotiations : The European film is at stake](#) / Europa Distribution, May 2013

"*If the cultural exception is gone, then all measures which support European film on the European level and in the Member states have to be scrapped because the liberalisation of the trade with goods and services means that all market participants have to be treated in the same way. Any kind of quotas are not allowed, all the subsidies have to be available for both parties – or none of them.*"

[The cultural exception is non-negotiable!](#) / Petition of European Filmmakers, 2013

The signatories call upon European heads of States to support the exclusion of audiovisual and film services from the EU-US trade negotiations.

[A thin Red Line](#) / Federation of European Film Directors, July 2013

" As discussions on the wording of red lines overshadowed the initial issue of quotas and subsidies, the real question finally came to the surface: What happens to our audiovisual works online? What space will Europe have to make its own policy regarding online operators? What was really at stake was more than the current legislation on investment in and promotion of independent European works, but also how the audiovisual sector can be equipped to straddle the transition to the digital economy and an online market place which today is completely dominated by American giants such as Google, Amazon, Apple iTunes ."

[Trade Barriers to Exports of U.S. Filmed Entertainment](#) / Motion Picture Association of America October 2010

" MPAA member companies, as firms with major European operating entities, welcome the European Union's goal of creating a single market to foster European economic and political unity. However, there are concerns that the harmonization process does not always fully take into account the concerns of non-European producers and distributors of audiovisual entertainment ." pp 36-41

## NGOs

[EU-US trade talks: Parliament TTIP-toes around IPR & culture IP integrity](#) / IPtegrity 23 May 2014

" The European Parliament has today established its position on the EU-US Trade agreement. In the post-ACTA environment, its stance on copyright is waivering, as is the issue of transparency in the negotiations. But, unlike ACTA, TTIP is a broadly-scoped agreement, and the copyright industries are the subject of a quite different controversy – the so-called cultural exception. Moreover, another telecoms issue appears to have been entirely ignored."

## Statistics

### European Audiovisual Observatory

[Focus series](#) . The FOCUS presents the latest trends on all the major film markets around the world regarding film production and distribution as well as admissions. [Focus 2012](#) and [Focus 2014: World film market trends](#) are both available at EPRS Library at S 32.20.18 EUR 12/14. See also: [Box office down in the European Union in 2013 but first quarter of 2014 shows promise](#) , 9 May 2014

### UNESCO Institute of Statistics (UIS)

[Measuring cultural diversity](#) : due to the complex nature of subject, the diversity of cultural expressions requires a wide range of statistical indicators. As it stands, very few countries regularly collect data on culture, and for those that do, most of the statistics cannot be compared internationally. There are few standards to identify or monitor the wealth of cultural expressions and practices found across the globe. The UIS aims to provide countries with the frameworks, tools and indicators needed to monitor the diversity of cultural expressions.

[International Flows Of Selected Cultural Goods And Services, 1994-2003: Defining and capturing the flows of global cultural trade](#) / UIS, 2005

## Further reading

[Free trade and cultural diversity in international law](#) / Shi, Jingxia Oxford: Hart Publishing, 2013 available in the EPRS library at S 20.12.20.24 SHI 13.

[The Future of the Culture and Trade Debate: A Legal Outlook](#) / Neuwirth, Rostam Josef, Journal of World Trade, Vol. 47 - Issue 2, March 2013, 29 p.

[European film policies in EU and international law : culture and trade - marriage or misalliance?](#) / Herold, Anna, Groningen: Europa Law Publishing, 2010. Available in the EPRS Library at S 32.20.18 CEE HER 10

[Diversité culturelle et droit international du commerce](#) / La Documentation Française, 2009. Available in EPRS Library at S 20.12.20.24 RIC 09.

[Free trade and culture : a study of relevant WTO rules and constraints on national cultural policy measures](#) / Bossche, Peter van den. Amsterdam: Boekmanstudies, 2007. Available in EPRS Library at S 20.12.20.24 BOS 07

[Cultural diversity and the WTO : David versus Goliath?](#) / Wouters, Jan ; De Meester, Bart , Leuven Centre for Global Governance Studies Working papers, WP5, 10/2007.

[The cultural industries in international trade law : insights from the NAFTA, the WTO and the EU](#) / Neuwirth, Rostam Josef. Florence, European University Institute, 2005.

[Can protectionism ever be respectable? A Skeptic's Case for the Cultural Exception, with Special Reference to French Movies](#) / Jacques Delacroix and Julien Bornon in *The Independent Review* 9: 3, Winter 2005 pp. 353-374.

[The French audiovisual policy impact and compatibility with trade negotiations](#) / Cocq, Emmanuel ; Messerlin, Patrick A. , Hamburgisches Welt-Wirtschafts-Archiv (HWWA) Report 233, 2003.

## More information

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