



COALITIONS EUROPÉENNES POUR LA DIVERSITÉ CULTURELLE
EUROPEAN COALITIONS FOR CULTURAL DIVERSITY

Contribution to the Public Consultation on a Future Trade Policy

July 2010

1. Introduction

The Lisbon Treaty clearly considers EU trade policy as an integral part of the Union's overall external action – and therefore it must address development, environmental and social objectives as well as contributing to the other objectives set out in the Treaty on the European Union:

Question 1: Now that the new Lisbon Treaty has entered into force, how can we best ensure that our future trade policy is coherent with the EU's external action as a whole and notably in relation to the EU's neighbouring countries?

Created in 2005 by several national coalitions of cultural professional organisations in Belgium, Germany, France, Slovakia and Spain in order to foster the signature and ratification of the 2005 UNESCO Convention for the protection and the promotion of the diversity of cultural expressions, the European Coalitions for Cultural Diversity (CEDC) gather today 12 European Coalitions (Austria, Belgium, France, Germany, Hungary, Italy, Ireland, Portugal, Slovakia, Spain, Switzerland and the UK).

Its main objective is to keep the European institutions informed of the expectations and needs of the creators and the European cultural professional organisations, not only with regards to the UNESCO Convention, but also on any other subject related to culture and under European competence, particularly trade negotiations.

The CEDC has been particularly active in the last three years on bilateral trade negotiations as the European Commission started to systematically introduce Cultural Cooperation Protocols (CCPs) in bilateral trade negotiations. It has raised awareness among the cultural sector about the dangers for cultural diversity of the systematic attachment of CCPs based on the same template to Free Trade Agreements (FTAs). In fact, CCPs, in particular the one negotiated with Korea, far from

implementing the UNESCO Convention, questioned the EU commitment of non-liberalization of the audiovisual services, as well as the specific nature of cultural products and services.

CEDC called on the Commission (both DG TRADE and DG EAC) to develop a specific strategy for CCPs in order to ensure the autonomy of the cultural negotiation and the implementation of an ambitious and coherent European cultural policy. Its main recommendations were integrated into the French Communication *For a new EU external cultural strategy* elaborated by the French administration and a working group of professionals, among them the French Coalition, under the auspices of the French Foreign Affairs Ministry in 2009.

It seems that CEDC's claims have been heard as it appears that the commercial agreements with Central America and the Andean Community concluded in 2010, have taken into account the guidelines provided by the French communication, in particular the following ones:

- to clearly separate the CCPs from the commercial agreements;
- to deny access to the broadcasting quotas of European audiovisual works;
- to link the entry into force of the CCPs to the ratification of the UNESCO Convention by the partner countries.

If the European Commission is to consider, in the light of the new Lisbon Treaty, a coherent commercial policy addressing the cultural objectives of the European Union, CEDC firmly believes that the recent change of strategy should be imperatively confirmed by an official Commission communication on this new strategy in order to give guarantee to the sector that the Korean case will not be repeated. Assurance was given to CEDC during a meeting with representatives of European Commissioners De Gucht and Vassiliou in May 2010 that such a document would be soon released. However, nothing happened so far. Consequently, CEDC calls on the Commission to publish its new strategy as soon as possible and to open a specific civil society public consultation process on this issue.

Regarding the cultural relations with neighbouring countries, the general principles highlighted above should be followed as well. As a consequence, the non-liberalization of the audiovisual services and the exclusion of these services from the commercial part of the agreement, in accordance with the commitment taken by the EU in the WTO framework, should be the rule. CEDC insists on the need to apply a horizontal exclusion for these services when negotiating with Ukraine, even if this point was not expressly mentioned in the negotiating mandate given to the Commission. Moreover, in the neighbouring countries, a special attention should be given to the enhancement of cultural cooperation on the basis of the Council of Europe *acquis*. For instance, the ratification of the Council of Europe's European Convention on Transfrontier TV should be encouraged referring to the mandates with the Caucasus countries which constitute good examples to follow.

4. Services

Services are an increasingly important part of the global economy. A manufacturing supply chain is unthinkable without services inputs. Tackling barriers to trade with major partners in areas such as financial services and communication services; business services and Information and Communication Technology (ICT) too could give an important boost to EU economic recovery. At the same time, trade in many services, especially those that can be delivered through digital communication channels, has increased rapidly. Services negotiations, both under the WTO General Agreement on Trade in Services (GATS) and in Free Trade Agreements, have so far focused mainly on consolidating market access conditions already in place, and only rarely on creating new openings for services trade. The difficulties in securing significant new market access are holding back potential productivity increases and job creation in EU services sectors and in manufacturing sectors:

Question 8: Should the EU aim for more trade in services and if so, how? Multilateral and bilateral negotiations have only partially succeeded in opening trade in services so far, so would a renewed focus on trade in services among key trading partners (plurilateral approach) offer a useful alternative avenue?

CEDC recalls the specific nature of cultural and audiovisual services and the EU commitment to not integrate these services into any liberalization process, be it multilateral, plurilateral or bilateral. To this end, it is highly needed to exclude any disguised access to markets (such as access to European audiovisual works' quotas) from any negotiation with trade partners (countries with non-developed cultural industries are a specific case as explained below).

8. Trade and Development

The link between trade and development has become a major issue in recent decades as more and more countries, especially in Asia, have shown that trade can be an important means of boosting economic growth and lifting people out of poverty. The EU is a global player and takes its development responsibilities seriously. It is negotiating and implementing Economic Partnership Agreements with a view to sustainable development and regional integration in Africa, the Caribbean and the Pacific. Negotiations have also taken place with the Central American and Andean Community countries. A parallel consultation is already in progress on reforming the EU's general system of preferences for developing countries. However, trade policy alone cannot address the development challenges some countries face. Note that in light of the importance and scope of the topic, a future communication on trade and development will address these complex linkages between these policies. This too will be preceded by a public consultation:

Question 14: How can the EU best strengthen the issue of trade and development in its trade policy? Should the EU pursue a more differentiated approach in its trade relations to reflect the level of development of particular partners? How should the EU approach the issue of trade preferences in relation to the generally low level of EU Most Favoured Nation (MFN) tariffs,

which will further be eroded following the possible conclusion of the Doha Round?

CEDC considers that the principle of adaptation should be at the core of CCPs' negotiations. Therefore, contrary to the CCPs proposed to CARIFORUM and Korea which were based on the same template, CEDC recommends that the content of any CCP should be adapted to the specific level of development of the partner's cultural industries. Consequently and in line with Article 16 of the UNESCO Convention, preferential treatment could only be given to countries with non-developed cultural and audiovisual industries.

In addition, special attention should be given to the specific needs of the partners' cultural and audiovisual sectors so that EU cultural cooperation can target these needs and offer added value. To this end, in-depth studies of the cultural and audiovisual sectors' situation of the partners and the existing cultural relations both at national and EU level, should be conducted through an impact assessment and a broad consultation of the cultural professional organisations.

10. Enforcement and dealing with unfair practices

One important factor in promoting 'high-quality' growth is innovation, for which the Europe 2020 strategy also has a number of initiatives. Ideas and innovation need to be protected through effective protection of Intellectual Property Rights (IPR), including geographical indications (GIs). This is why the Commission in November 2004 put in place a strategy for enforcing IPR outside the EU. The strategy is currently being evaluated, and an Enhanced IPR Protection and Enforcement Strategy in third countries is due to be launched in 2011. Cooperation is also underway with major partners in order to promote better respect of IPR rules in third countries. Other issues such as access to medicines in developing countries need to be taken into account:

Question 18: What else can EU trade policy do to further improve the protection of IPR in key markets?

The enforcement of IPR in big developing countries such as China, Brazil and India represents an important challenge for Europe. Whereas these countries could bring new audiences and new business markets, the importance of counterfeiting prevents rights holders from earning any new revenues. The European Union should strive to make its creativity respected in third countries. Dialogue, cooperation and technical assistance should be promoted. The Anti-Counterfeiting Trade Agreement (ACTA) could also be a good way to extend the level of IPR enforcement of the *acquis communautaire*, if adopted by the big developing countries.

11. An open approach to shaping trade policy

The Commission is committed to shaping trade policy as openly and democratically as possible.

Thanks to the Lisbon Treaty, the increased role for the European Parliament in trade policy improves both the accountability and the transparency of trade policy. However, in addition, trade policy should build on a wide range of points of view inside the EU and from other parts of the world. There are a number of structures, such as DG TRADE's Civil Society Dialogue to assist with this, but the approach can further evolve to take full account of the new EU institutional environment and changes in modern communications technology:

Question 19: What more should the Commission do to ensure that trade policy becomes more transparent and to ensure that a wide variety of views and opinions is heard in the policy-making process?

CEDC thanks DG TRADE for the civil society dialogue it has established and through which it informs the interested parties on the state of play of the different negotiations' processes. However, CEDC regrets that DG TRADE representatives fail to deliver sufficient information on cultural cooperation at these meetings, and rarely answer the civil society questions on this issue. As a consequence, the civil society representatives have not been properly informed on the progress of the CCPs' negotiation with Central America and the Andean Community. Therefore, CEDC calls on the Commission to improve its communication on the cultural cooperation issue and insists on the need to consult the cultural sector on the future strategy relating to cultural matters.