

# ***Free Trade and Culture***

## ***A Study of Relevant WTO Rules and Policy Options for the Protection of Cultural Values***

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### **Biographical note**

Peter Van den Bossche (1959) is Professor of International Economic Law and Head of the Department of International and European Law at Maastricht University, the Netherlands. He is a visiting professor at the World Trade Institute, Berne, Switzerland, at the Institut d'études européennes of the Université libre de Bruxelles, Belgium, and at the Institute of European Studies of Macau, Macau SAR, China.

Prof. Van den Bossche graduated from the Faculty of Law of the University of Antwerp (1982). He holds a LL.M. from the University of Michigan, Ann Arbor (1986) and a PhD in law from the European University Institute, Florence (1990). He worked at the Court of Justice of the European Communities, Luxembourg, as référendaire of Advocate-General W. Van Gerven (1990-92) after which he joined the Faculty of Law of Maastricht University, where he was appointed to the position of senior lecturer in 1993. From 1997 to 2001, Van den Bossche was Counsellor to the Appellate Body of the World Trade Organization, Geneva. In 2001, he served as Acting Director of the Appellate Body Secretariat.

In recent years, Van den Bossche has published extensively in the area of international economic law and international economic dispute settlement. He is the author of *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, published by Cambridge University Press, 2005, reprinted 2006, 737 p.

(<http://www.cambridge.org/catalogue/catalogue.asp?isbn=0521529816>).

### **Summary of the conference paper**

The paper presented by Peter Van den Bossche at the Helsinki Conference on 15 December 2006, is entitled '*Free Trade and Culture: A Study of Relevant WTO Rules and Policy Options for the Protection of Cultural Values*', and explores from the perspective of WTO law the contentious relationship between international trade liberalisation and the protection of cultural values such as cultural identity and cultural diversity. As a result of economic globalisation and trade liberalisation, the values of cultural identity and cultural diversity are under threat. To protect these values, many countries have adopted measures in support of their domestic cultural goods and services. After briefly reviewing the myriad of measures that are, or can be, taken to this end, the paper examines whether these measures are consistent with WTO law. The paper sets out the basic obligations of countries under the WTO Multilateral Agreements on Trade in Goods, and in particular the *General Agreement on Tariffs and Trade 1994* (GATT 1994), the obligations under the *General Agreement on Trade in Services* (GATS) and the obligations under the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement). The basic obligations examined

here include the most-favoured-nation (MFN) treatment obligation, the national treatment obligation, the prohibition of quantitative restrictions; and the obligations relating to subsidies, customs duties on goods, and market access barriers for services. After examining these basic WTO obligations, the paper then looks at the relevant exceptions to these obligations, including the general public policy exceptions under the GATT 1994 and the GATS as well as the economic emergency exception under the GATT 1994. The paper also explores the scope for applying anti-dumping duties and countervailing duties on dumped and subsidized imports of cultural goods respectively. On the basis of the above analysis of WTO obligations and exceptions, the paper concludes that WTO law, as it currently stands, allows countries to protect cultural values, such as cultural identity and cultural diversity, but only to some extent. It could be argued that if international liberalisation of trade in cultural goods and, especially, services continues its course (which is likely to happen), the current WTO rules would not allow countries to protect cultural values to sufficient extent and in an effective manner. Rejecting the status quo, the paper examines three divergent policy options from which countries can, and should, choose in the future. These three options are: first, to take trade in cultural goods and services out of the scope of application of WTO law ('Take culture out of the WTO'); second, to adopt international rules for the protection of cultural values outside the context of WTO law, such as the UNESCO Convention on the Protection of Cultural Diversity ('Adopt other (non-WTO) international rules for the protection of culture'); and third, to develop new and/or effective WTO rules for the protection of cultural values ('Provide for cultural exceptions in WTO law'). The paper discusses the arguments for and against each of these options and concludes that – on balance - the third option is to be preferred.

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