Chapter 5: Rules
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CHAPTER 5
RULES
Rules govern almost all international trade. Trade rules define acceptable and unacceptable commercial policies, establishing accountability for state actions. The principles of the trade regime have been widely accepted, by and large—yet in filmed entertainment, they have repeatedly caused dissension and controversy. This chapter investigates the enduring trade-culture debate in four key periods of regime development: negotiations in the League of Nations; the drafting of a Charter for an International Trade Organization (ITO), a precursor for the GATT; deliberations in the GATT on trade in television programs; and the Uruguay Round Agreement on trade in services.

Each instance has seen rival coalitions and competing conceptions of legitimate state action at odds. On one side, a bloc of countries, primarily from Europe and English-speaking areas, has pushed time and again for the trade regime to recognize protection of the national culture as valid grounds to restrict trade. Of the numerous formulas floated, the most common is a cultural exception to conventional trade rules. On the other side, the United States, at times with partners, has consistently objected to loopholes for filmed entertainment. Because of this persistent impasse, movies, television programs, and other audiovisual media occupy an unusual position in the trade regime: no cultural exception exists in any GATT or WTO agreement, yet neither has the principle of national treatment, which requires equal treatment for foreign and domestic goods and services in national law, been firmly established in this area.

What follows is the first complete account of almost a century of maneuvering over culture’s place in trade rules. My aims are twofold. First, the narrative interprets the choices made in four multilateral trade rounds to sort out how issues, interests, bargaining postures, and competing coalitions have shaped the trade regime’s design at important junctures. Second, the variety of countries at the table in a negotiating round offers an opportunity to assess the analytical expectations about state preferences on trade
and culture presented in the last chapter. At each point in time, I evaluate this framework against the evidence.

For each trade round, the universe of cases is the roster of state participants. This is not a small number: 28 countries joined the League of Nations trade negotiations; at the Havana Conference, which finalized the ITO Charter, 54 states participated, of which 36 took part in earlier meetings in Geneva; the GATT had 39 contracting parties when television rose to the agenda, of which 10 joined a working group to discuss the matter; 127 countries signed the Uruguay Round Agreements. These samples include a diverse group of countries with a range of interests.

Information about the positions states took in each trade round is available in the records of the League of Nations, the United Nations (UN), and the GATT. Classifying countries into categories structures the analysis of qualitative material. This allows a more systematic assessment of the analytical framework than is possible through narrative alone, while also relating empirical evidence to the historical processes at work.

One methodological consideration is the validity of inferring national preferences from archival records. In analyzing this material, I assume that delegates at international conferences speak for the interests of their governments, and that abstention from taking a position is an expression of indifference. At times, these assumptions may be wrong. Given the many subjects discussed in a trade round, any one issue position is relatively costless. The chains of delegation can be long and easily broken if diplomatic agents in faraway places are poorly monitored, increasing the chances that personal idiosyncrasies surface. Issue linkages, a common tool of negotiation, encourage states to selectively pick their battles by trading losses in one area for gains in another, raising the possibility that delegates may refrain from taking a stance on certain issues. And negotiators may

\[1\] UN and GATT documents are listed in appendix 1; they can be found on the WTO website, [http://www.wto.org/english/docs_e/gattdocs_e.htm](http://www.wto.org/english/docs_e/gattdocs_e.htm).
prefer public neutrality while bargaining behind closed doors. Without enough evidence, it is difficult to know just how closely delegate statements reflect state preferences.

With this disclaimer in mind, the evidence presented in the chapter reveals a clear central tendency: countries with large home markets and cultural proximity to the United States have been more strongly inclined to press for a cultural exception in trade rules, exactly as the framework in chapter 4 expects. In fact, the pattern recurs repeatedly in negotiations involving dozens of countries in four trade rounds across seven decades, starting with movies at the dawn of sound and concluding with television, satellite, and cable in the digital age.

Films and the League of Nations

The first-ever multilateral trade agreement, sponsored by the League of Nations and signed by twenty-nine countries in 1927, was the International Convention for the Abolition of Import and Export Prohibitions and Restrictions. Though twenty signatories eventually ratified the Convention, it never gained legal force. Now all but forgotten in the annals of the interwar breakdown, this episode marks the first international dialogue about culture in the trading system.

The Convention’s target was nontariff barriers, which had been on the rise since the Great War. Although the final text never explicitly defined the “prohibitions and restrictions” to be abolished, it was understood to mean quotas and other quantitative restrictions, which signatories were supposed to remove within six months (League of Nations 1927, 10). These commitments were never tested, however, because several parties conditioned their acceptance on accessions by others. In 1930, Poland shelved consideration of the treaty, nullifying the ratifications of seven states that had insisted upon Polish entry. Without Poland, the Convention was inoperative.

What killed the deal was the insertion of numerous product-specific exceptions,
which riddled the agreement with loopholes and handed Poland a rationale to spurn it. In the course of the debate over special exceptions, the United States implored conferees to declare quotas on imported movies a banned trade restriction under the Convention. The issue was never settled. In the process, however, several countries staked out firm stances on films as an exception to conventional trade rules.

National Positions on Films in the League Convention

The Convention of 1927, though stillborn, holds significance as an early example of how states approached the problem of trade and culture. Evaluating national positions against market size and cultural proximity provides suggestive evidence in favor of the book’s expectations about state preferences and trade rules.

Twenty-eight countries signing the Convention are displayed in table 5.1, minus the United States, which pushed to end film quotas. The vertical axis arranges them in descending order of cultural proximity to the United States, with Britain at the top and six other countries at the bottom. The horizontal axis divides countries into groups according to market size. Inside the boxed area are the culturally close large countries expected to have the strongest incentives to challenge the U.S. position. In boldface are states whose delegates reserved their rights to maintain quotas on foreign films. These four states are Germany, France, Italy, and Austria.

National positions strongly correspond with country size. The states that argued for keeping films outside of trade obligations generally had larger markets than states that

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2 Poland specifically objected to exceptions for coal and scrap metal filed by Germany and Czechoslovakia. League of Nations 1930, 22-23.

3 India, the only non-sovereign recognized at the conference, lodged a fifth reservation on films. Its delegate, a British national serving as Indian Trade Commissioner in London, had nothing to say about quotas; he extolled the value of government censorship—an unrelated issue—for protecting Indian culture.
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took no position. Market size, chapter 2 explains, gained importance with the rise of feature films in the 1910s and the advent of sound accentuated this advantage. Although talking films had just started to appear, longer narrative features were well established. Accordingly, this effect shows up in the defense of movie quotas by Germany, France, and Italy, the world’s third, fourth, and fifth largest markets. In Germany and France, the survival of film production was hardly in danger, yet delegates presented the industry’s preservation as a vital national need. Britain’s market was larger than these three others, of course, and it is not clear why the country’s minister did not take a stand. Also puzzling is the assertiveness of one small state, Austria, whose envoy proclaimed that “there existed an Austrian film industry, and the Austrian government was bound to take care of it” (League of Nations 1928b, 89). Limited home markets left moviemaking on precarious footing in many places, yet other small states declined the opportunity to voice the same position.

National preferences track cultural proximity less closely, as several countries with small markets were culturally close to the United States. Movies were not yet as culturally distinctive as they would soon become after sound, though they often featured recognizable national stars and storylines with targeted demographic appeal. Proponents of an exception for films nevertheless framed their claims in cultural terms. To France’s delegate, foreign films had to be regulated to preserve “the ideal of the country” and its “moral heritage.” The German representative cited the urgency of protecting the nation’s “moral and intellectual interests.” Italy’s minister protested “the constant, and in some respects dangerous, influence exerted by films which were produced in other countries and reflected a manner of life and customs differing at times appreciably from those of the country in which they were shown” (League of Nations 1928b, 88-90). Other European states whose undersized film industries faced greater risk of extinction could have joined in but except for Austria, these countries stated no position.

Britain, the most culturally exposed of all, again stands out for its restraint. The
problem at hand was whether the Convention covered films, and silence in this debate
does not necessarily signal apathy toward the outcome. Delegates carefully negotiated
treaty language and obediently notified the League Secretariat of nontariff measures in
force, which suggests that they took the exercise seriously—even if the Convention’s
entry into effect was uncertain and the prospects for enforcement questionable, diplomats
voiced and acted upon national interests on a range of matters. But the conference
technically lacked the authority to decide the legality of any particular policy, as the next
section explains, so the stakes were lower than if the negotiations had taken up films from
the outset. Under different circumstances, others might have risen to reserve their rights
to regulate films. Without knowing how delegations formulated negotiating strategies, it
is impossible to tell whether countries that did not voice a position held no interest in the
matter or held back for other reasons.

This context calls for caution in drawing inferences about the sources of variation
in national preferences. Yet it is revealing that the evidence is highly consistent with the
expectations worked out in chapter 4. Still, there is more to the story. The circumstances
under which film quotas cropped up and the terms of debate provide further insights into
the early history of trade-culture clashes.

Films as an Exception in the League Convention

The uproar over trade and culture in the Convention of 1927 raised two questions. First,
did the Convention include films? Second, if it did cover films, would countries have to
negotiate a special reservation to maintain quotas on imported movies?

Starting with the first question, nothing in the Convention text compartmentalized
films as an exception to the prohibition on quotas, quantitative restrictions, and licensing
requirements. The general exceptions in Article 4 permitted nonconforming measures to
achieve civic goals such as maintenance of public security, defense of morals and social
welfare, protection of public health, preservation of “national treasures of artistic, historic
or archaeological value,” and the management of state monopolies (League of Nations 1928a, 7-9). Italy’s delegate likened restrictions on foreign movies to the protection of humans against disease (League of Nations 1928b, 90), but only for rhetorical effect. A safeguard clause in Article 5 allowed temporary actions for “extraordinary and abnormal circumstances” such as the need to control food, military materiel, and other vital goods during wartime or civil conflict (League of Nations 1928a, 9), yet this was too narrowly construed to admit trade barriers of indefinite duration.

If neither the general exceptions nor safeguards warranted restrictions on imported movies, petitions for a special exception offered a last resort. A new Article 6 inserted in the draft Convention at the first negotiating session provided for product-specific exceptions—in effect, special safeguards that governments pledged to remove once the circumstances necessitating the measures had passed. This loophole was added to placate states that were looking to reserve the rights to maintain nontariff restrictions on certain specific products. The countries that signed the first draft Convention entered twelve special exceptions, opening the door to more requests. When the exceptions list could not be finalized at the first session, the conference reconvened in 1928 to continue the discussion. At the second session, participants filed an additional forty-four petitions under Article 6.

Petitions for special exceptions included a wide assortment of items—though not films. Products reserved in the first round of talks were generally trivial: dyes and sugar (Australia); alcohol and artificial mineral waters (Austria); natural dyes, coffee extracts, and tobacco stores (Britain); and ostriches and their eggs (South Africa). By the second session, waivers for import measures covered controversial items such as coal products (Germany and Czechoslovakia), synthetic dyestuffs and chemical intermediates (Britain and Japan), rice (Japan), and used machinery (Romania). Several other proposals were

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4 Much of this language resurfaced in Article 43 of the ITO Charter and its counterpart, GATT Article XX.
voted down or their sponsors shamed into retreat. Withdrawn waiver requests included synthetic nitrogen (Japan); cereals and flours (Norway); wine, automobiles, salicylic acid, assorted seeds and shoots, nitrates, and matches (Czechoslovakia); and various animal foods and livestock, plus automobile frames and bodies (Portugal) (League of Nations 1927, 26-27; League of Nations 1928a, 15-17, 238-242, 1928b, 118-119).

As the conference bogged down in product-specific exceptions, governments that wanted free rein to regulate movies apparently calculated that they could get by without a waiver. During the interval between the two sessions, France notified the League of plans for “certain restrictive measures” on imported films and asked for guidance on the statute’s compatibility with the treaty. French authorities claimed that “these measures cannot be described as prohibitions within the strict meaning of the Convention,” but they conceded that imports might be hindered “to some extent.” By design, the law satisfied the technical terms of the treaty because it did not concern the customs treatment of films as imported goods; rather, it controlled their distribution as a service, requiring movies in circulation to be licensed for screening through receipt of an official visa (Ulff-Møller 2001, 91). However, regulators would have “very broad” authority, U.S. officials noted, to deny visas “arbitrarily and for the sake of protecting the French film industry.”

The heart of the matter was that quotas on the distribution of imported movies fell into a gray area: the Convention banned “prohibitions and restrictions” at the border but set no limits on measures enforced after clearance through customs. France could block film imports while claiming to follow the rules because the Convention had no national treatment clause to prevent states from replacing border barriers with restrictions inside the market. A nonbinding declaration called on signatories to not establish “hindrances

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5 The French letter and the U.S. mission’s analysis are in U.S. Department of State 1942, 368-369.

6 France’s memo to the League stressed that the regulations would apply “equally to French and foreign films.” U.S. Department of State 1942, 368. All films, it is true, had to be licensed for exhibition; but the
of any other kind which would replace those that it is the aim of the convention to remove,” while an additional protocol noted that internal measures should not unfairly discriminate against imports (League of Nations 1928a, 23, 45). Neither requirement was explicitly stated in the treaty articles, however. Governments interested in controlling movie imports therefore awaited a definitive statement of the Convention’s scope before seeking a waiver.

In the opinion of U.S. negotiators, green-lighting the French decree would only encourage imitators to manage imports from inside the border, making the issue “of more importance… than any other raised under the Convention” (U.S. Department of State 1942, 366-367). In its instructions to the U.S. delegation, the State Department protested:

The fact that the restrictions on films are operated through rationing at the time of the granting of licenses for exhibition, rather than at the customhouse, does not essentially change their nature nor exempt them from the application of the Convention on any ground that they are internal measures. To refuse to grant licenses for the exhibition of foreign films or the films of a given country is tantamount in practice to refusing their importation into the country (U.S. Department of State 1942, 378).

Though France only wanted clarification not an exception, the U.S. strategy was to group films with the many product exceptions entered formally and challenge the lot of them—films most vigorously of all.

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visa system did in fact discriminate against imports—quite intentionally. Visas were allocated according to a producer’s output of French films; they were fixed in number and available only to French producers. Distributors of foreign films had to buy a visa for sale on the open market, or acquire distribution rights for the requisite number of French films (seven) to earn one of their own.
Under the treaty, it fell to participants and not the League Secretariat to settle the issue, but the conference was not empowered to interpret the Convention’s terms. This legal paradox killed any chance of resolving the status of films. Despite this snag, the U.S. minister took the floor at the second session to condemn restrictions on movies. Governments had every right to censor films inappropriate for public display, he pointed out, but hidden protectionism was abhorrent as “a question of principle.” If entry through customs did not confer the right to distribute and sell a product inside a country, then any state could “set up a machinery… of internal regulation by which it may act in harmony with the Convention but still against its purposes” (League of Nations 1928b, 87-88).

In defense, the French, German, and Italian delegates advanced three claims. The first was straightforward and logistical: the conference could not decide whether any law complied with the Convention. The other two points played up the distinction between movies and ordinary commerce. Film quotas, first of all, did not constitute “prohibitions or restrictions.” As the French delegate saw it, there was “a profound difference between a film and a typewriter or automobile” in that films engaged “the mind,” raising a “moral problem.” The Italian representative added that “the interests of Italian culture and… national ideals… stood much higher than economic considerations.” If films carried cultural substance, it naturally followed, the state had a responsibility to regulate their presentation to the citizenry—a duty that the Convention could not and must not infringe. Protecting national production preserved “the culture and individuality of nations” and their “moral heritage,” therefore it was “necessary” and “legitimate.” Closing his speech, the French minister stiffly declared: “It was impossible that there should not be some regulation on these lines” (League of Nations 1928b, 88-90).

This fierce debate in Geneva in 1928 set the first battle lines in the unending conflict over trade and culture. As the problem of film quotas burst into the open, sharp line of cleavage separated the United States, which demanded a level playing field, and Western Europe, which asserted a sovereign right to manage moving images. The rift
persists to this day. In the process, the Convention of 1927 spotlighted internal policies behind the border as the focus of dispute, foreshadowing future discussions of national treatment for movies and, eventually, services generally. Had the conference been fit to rule on the legality of France’s decree, the U.S. minister cabled Washington, the sentiment seemed to be “that nations have a right to maintain some form of protection for their culture and traditions” (U.S. Department of State 1942, 397). Because it could not render a final determination, however, film quotas were stuck in the netherworld between prohibited measure and permissible exception. No further discussion ensued because the Convention’s many exceptions—though not for films—alienated Poland. But while this first try at regime creation died, unceremoniously, the controversy it spawned lived on.

**Films and the ITO Charter**

The GATT marks the first successful multilateral trade agreement. Signed by twenty-three countries, this arrangement was part of a larger enterprise intended to establish a system of trade rules and an international institution, the ITO. After two preparatory sessions, one in London in 1946 and the other, which produced the GATT, in Geneva in the summer of 1947, and an interim meeting in New York between the first two sessions, the culmination of the third session in Havana in 1948 was a final treaty, the ITO Charter. The GATT, by design, inherited the ITO Charter’s general terms—but not its contentious sections on employment, investment, and development, or its imposing legal status. As a result, when the United States deferred ratification of the ITO Charter in 1950, the GATT was on hand to take over as the founding constitution of the trade regime.

The GATT inaugurated a basic framework of rules for commercial policy. In the area of trade and culture, Article IV of the GATT, a verbatim restatement of ITO Charter Article 19, tackles the regulation of movie exhibition. Titled “Special Provisions relating to Cinematograph Films,” it is the only article in either treaty named for a product. In fact, the GATT contains scarcely any mention of specific commodities—films are special
indeed. It is a stretch, however, to call it “the first major trade agreement to make explicit
reference to culture” (Acheson and Maule 1999, 59), as the word “culture” never appears
in the GATT text. Article IV is about a traded good, not an abstract ideal, and it is silent
about the reasons why states might choose to control access to that good.

The special provisions for films are unique furthermore as the only item “relating
to trade in services… directly addressed in the original thirty-five articles of the GATT.”
The phrase “trade in services” was not even part of the vocabulary of the time. Trade in
goods is the focus of the GATT and the product in question, “exposed cinematograph
films,” is valued for the revenue that repeated showings to paying audiences brings. As a
service inside a good, states prefer to regulate access using quantitative restrictions at the
point of delivery to theaters and exhibition to customers, rather than at customs. Same as
in 1927, national treatment, not entry into the market, was the central issue.

Article III of the GATT includes a detailed national treatment clause, an oversight
in the Convention of 1927. It requires that imports, after clearing customs, be treated the
same as “like products of national origin,” and it explicitly forbids differential taxation
and “internal quantitative regulation relating to the mixture, processing or use of
products.” Article III, however, includes three specific exceptions. The first two are for
subsidies and government procurement. The third is for “internal quantitative regulations
relating to exposed cinematograph films and meeting the requirements of Article IV.”

The terms of this last exception in Article IV are detailed in four parts. First, the
exception is confined to one policy instrument, screen quotas. In recognizing a right for
governments to maintain screen quotas, Article IV prohibits—though without directly
saying so—all other infringements on national treatment for imported films. Second, it
defines screen quotas as the preservation of a minimum share of total exhibition time for

7 GATT 1990, MTN.GNS/AUD/W/1, 1.
“films of national origin,” elaborating that this “shall be computed on the basis of screen time per theater per year.” Yet nothing in Article IV limits the restrictiveness of these quotas; reserving all exhibition time for locally-produced films is not a violation, literally interpreted. Third, only films of national origin can be favored; screen quotas must not discriminate among foreign sources of supply (although preferential quotas already in place were permitted to continue). Fourth, screen quotas are negotiable: governments invoking the exception still bear a general responsibility to entertain requests from trade partners to liberalize or eliminate them.9

In a nutshell, the GATT covers trade in goods and one service, cinematograph films, whose packaging carries the appearance of a commodity. The GATT contains no cultural exception for films or for anything else. None of the general exceptions in Article XX apply to films, nor are films exempt from the ban on import quotas in Article XI, for reasons that I will explain in a moment. Instead, there is a limited exception from national treatment in Article III—but only for screen quotas, as Article IV elaborates. Prohibited altogether are quantitative restrictions on film imports, quotas on film distribution such as France’s described in the last section, and internal taxes on imported pictures. In legalizing nontariff barriers for films, the GATT stipulates that they must be levied at the point of sale, the cinema. It thereby disciplines regulations on a traded service, movie distribution and exhibition, by way of special rules for a traded good, exposed motion-picture films.

This exceptional recognition for films, like the new trade regime that established it, was a delicate compromise struck through painstaking negotiation. Its driving force was the United States, which flexed its political muscle to propel the whole trade round forward and in the process set the agenda for films by initially pushing to ban restrictions on films of every kind but tariffs. Several others in the negotiations, however, refused to

surrender autonomy over the movies without a fight. Once more, the subject of trade and culture bared deep divisions often expressed in passionate oratory.

National Positions on Films in the ITO Charter

For almost fifty years until the formation of the WTO, the GATT constituted the only multilateral rules for trade in cultural goods—notably films, a special case of the general principle of national treatment. This exception, detailed in Article IV, isolates screen quotas as the only acceptable method of regulating imported entertainment.

The criteria for films emerged from the give and take of the larger process of drafting the ITO Charter. After some opening discussion in London and New York, the language of GATT Article IV was hammered out at the Geneva session. This text withstood challenge at the Havana Conference and became Article 19 of the ITO Charter.

Archival records provide detailed information about national positions on trade rules for films in these talks. Table 5.2 lists 36 countries: 21 signed the GATT, and 15 others participated at both Geneva and Havana. At Havana, 18 more joined the talks for the first time, but none took a position on films so the table omits them. In principle, any of these delegations could have spoken up on the issue, though they did not.

The table’s vertical axis lists countries in descending order of cultural proximity

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10 Twenty-three countries signed the GATT. Not included in the table are the United States, whose draft charter banned internal regulations on films, and Luxembourg, which was represented by the Belgian delegation.

11 Countries with observer status at Geneva are from UN 1947, E/PC/T/180, 5. Countries signing the ITO Charter are listed in UN 1948, ITO/228.

12 They were Austria, Bolivia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Haiti, Indonesia, Iraq, Ireland, Italy, Jordan, Liberia, Nicaragua, Panama, the Philippines, Portugal, and Switzerland.
to the United States, with English-speaking countries the culturally closest and non-
European linguistic areas the furthest. Along the horizontal axis, the largest markets are
situated rightmost,\(^{13}\) midsized markets in the center, and small markets to the left. The
two largest—Britain and France—are boxed on the expectation that country size and
cultural exposure raised the stakes of trade rules for films. The states that pushed for
exceptional status for films are shown in boldface. Of this group, Britain, France, New
Zealand, and the Netherlands backed the compromise allowing screen quotas; Norway
and Czechoslovakia held out for a wider exemption.

National positions in these negotiations line up with market size insofar as the two
biggest countries, Britain and France, acted as expected. Britain was the second largest
market in the world by far, and its delegation plainly emphasized the trouble producers
faced on account of the vast U.S. market. Britain’s representative called for a “reliable
method of safeguarding domestic film production” on the grounds that “countries will not
allow their own film production… to be swamped by imported films simply because the
latter happen to be better organized commercially.”\(^{14}\) While the French delegation was
not so explicit about its industry’s commercial challenges, its support for an exception for
screen quotas is predictable given the country’s market size. Pressure from four small
countries—New Zealand, the Netherlands, Norway, and Czechoslovakia—is more
surprising in this light. Norway’s delegate underscored the limitations of small linguistic
markets, arguing that “smaller countries, the language of which are not generally
understand beyond their frontiers,” had legitimate grounds “to facilitate the production of
cinematograph films” in their native language.\(^{15}\) English-speaking New Zealand, part of
the cinema’s largest linguistic area, likewise offered that “the cultural aspect of films…

\(^{13}\) Italy did not attend until Havana; Spain and occupied Germany were not invited.

\(^{14}\) UN 1947, E/PC/T/A/SR/10, 19.

\(^{15}\) UN 1947, E/PC/T/W.99, 3.
legitimately worries small countries.”¹⁶ But if small size was a source of vulnerability, it is notable that the great majority of small countries took no position.

National preferences also generally track cultural proximity. Countries culturally close to the United States were significantly more inclined to demand special trade rules for films than were countries with greater cultural distance. British diplomats played up the cultural angle above all, arguing repeatedly for freedom to take action against outside influences. Norway’s minister likewise underscored the impact on attitudes, lifestyles, and behavior. The presence of U.S. films in his homeland, he argued, made it “essential [that] not only the ways of life of some other country should be shown.”¹⁷ Surprisingly, two English-speaking countries, Australia and Canada, did not articulate the same positions. These anomalies aside, all of the governments to speak out on films, except for Czechoslovakia, hailed from English-speaking areas or Northern Europe.

Countries with more cultural insulation from the United States generally declined to take a stand. Some found the reputed cultural importance of films perplexing. India’s delegate could not fathom “why films should be excepted when there are other more vital commodities which would merit more such exception.” Chile sought to parlay cultural concerns into exceptions for newsprint and paper products “because paper is important in the cultural and political life of nations.”¹⁸ At Havana, Argentina and Brazil proposed exceptions for coal, sulfur, fuels, and foodstuffs, arguing that “commodities of greater importance than films… deserved to be exempted” from national treatment.¹⁹

The categorization of countries in table 5.2 and the statements of delegates are suggestive of the effect of country size and cultural proximity on how states approached

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¹⁶ UN 1947, E/PC/T/A/SR/10, 27.
trade rules for films at the ITO-GATT conferences. Not every country acted as expected. Yet the findings still comport nicely with the argument in chapter 4. At the same time, differences in emphasis and nuance are visible in the positions countries adopted in this debate. A closer look at the arguments presented and the options tabled provides a fuller picture of how the compromise to permit screen quotas was brokered.

Films as an Exception in the ITO Charter

Bargaining over the ITO Charter’s handling of films revived the squabble begun in the League of Nations years earlier. The same basic questions resurfaced and the problem lurked from the very first talks. Should the ITO Charter cover cultural goods, specifically films? If films were included, should there be special rules to account for their cultural characteristics? Should national treatment apply to films at all, in part, or in full?

The U.S. government’s Suggested Charter of 1946 set the agenda for the whole undertaking and took a hard line on films. Separate articles of the draft text included a general ban on quantitative restrictions and internal mixing requirements, aiming to end nontariff barriers at the border and stop their relocation behind it. The national treatment clause in the Suggested Charter added another line of defense, prohibiting “all internal laws, regulations or requirements” against imports. To amplify the importance of equal treatment for the rental and screening of imported movies, the words “distribution” and “exhibition” were deliberately added to the text (U.S. Department of State 1946, 4).

This bid to end domestic regulation of movies focused on Britain. The MPAA considered the British market “virtually as important as all of the other countries of the world”\(^20\) and its goal was to force Whitehall to drop its quotas on film distribution and exhibition. The British correctly anticipated that U.S. negotiators, one memo warned,  

\(^{20}\) “Supplementary Statement to the Committee for Reciprocity Information by the Motion Picture Association of America,” 27 February 1947, RG 43, ITO Subject Files, Box 60, 4.
were “going to try for a convention which would prohibit film quotas” (Jarvie 1994, 165).

At the first negotiating session in London, the British identified films as their only measures not in conformity with national treatment in the Suggested Charter. Although British officials supported a strong national treatment clause to prevent internal measures from thwarting trade, “one exception” was needed, they argued, for regulations favoring national films. Accordingly, they asked to delete the word “exhibition” to keep films out of the ITO. The British delegation furthermore demanded an explicit statement that “the exhibition of imported cinema films may be permitted to such extent as may be necessary to protect national cultural objectives in the importing country.”

Though backroom dealing would take place later on, most negotiation over films was done multilaterally and in public, and many other voices chimed in. In the push to carve out films from national treatment, two countries made common cause with Britain from the start: Norway and Czechoslovakia. A third, New Zealand, bargained to keep its film hire tax, a duty imposed on the local revenues of nonresident film distributors.

In a compromise hatched at the interim meeting in New York, the United States conceded to demands from Britain, Norway, and Czechoslovakia to exclude films from national treatment. The word “exhibited” was deleted and a paragraph added to exempt “internal regulations or requirements relating to the exhibition of cinematograph films.” Governments would remain free to impose quantitative restrictions on films as long as the measures were negotiable like tariffs, so the United States would remain free to press

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21 UN 1946, E/PC/T/C.II/11, 1.
22 UN 1946, E/PC/T/C.II/PV/10, 18-19.
24 UN 1946, E/PC/T/C.II/W.5, 3.
trade partners for concessions.\textsuperscript{27} The U.S. delegation, however, refused to excuse internal taxes, leaving New Zealand unsatisfied.\textsuperscript{28}

A few months later in Geneva, this bargain fell apart. The United States reneged, declaring the New York draft unacceptable: it allowed countries to discriminate against a major U.S. export and left “wide open the door for violating fundamental purposes of this Charter,” which was that “all important industries should be treated alike.”\textsuperscript{29} To remedy the imbalance, the United States pushed to return “exhibition” and “exhibited” to the text and replace the provisionally agreed paragraph on films with a new clause stipulating the removal of “laws, regulations or requirements relating to cinematograph films” within three years.\textsuperscript{30} Norway countered, proposing a one-sentence amendment to the effect that national treatment did not apply to films.\textsuperscript{31} New Zealand continued its bid to add an exemption for internal taxes to the New York text.\textsuperscript{32}

Critics of the U.S. position contended that films were not a normal article of trade. In this viewpoint, films engaged the imagination whereas ordinary merchandise served physical or material needs. The British repeatedly set “cultural” against “commercial” to underscore the extraordinary nature of films. Others elaborated and amplified this theme. Norway’s minister asserted that films “should… be treated as a product of art on the lines of theatrical performances, operas, etcetera” aesthetic pleasures that “exercise an influence on people’s interests and ways of life.”\textsuperscript{33} Czechoslovakia’s delegate contrasted

\textsuperscript{27} UN 1947, E/PC/T/C.6/55, 7-8.
\textsuperscript{28} UN 1947, E/PC/T/C.6/8, 1-2.
\textsuperscript{29} UN 1947: E/PC/T/A/PV/9, 48 and E/PC/T/A/SR/10, 19.
\textsuperscript{30} UN 1947, E/PC/T/W/23, 2.
\textsuperscript{31} UN 1947, E/PC/T/W.99, 1.
\textsuperscript{32} UN 1947, E/PC/T/W/106.
\textsuperscript{33} UN 1947, E/PC/T/W.99, 3.
the “spiritual value” in the creative appeal of films and the “material value” of the raw stock and manual labor embodied in run-of-the-mill produce. This difference made it necessary to upgrade movies to an “equal level with all other artistic creations and means of expression and accord them the same equitable treatment” instead of grouping them “under [the] same footing with shoes or lard or any other industrial products.”

In this line of reasoning, the artistic quality of films undermined the efficacy of conventional regulatory tools. Subsidies inevitably would prompt politicking over “the cultural value of a proposed film,” Norway’s delegate mused, and tariffs did not work because a film could not be valued for customs purposes until it had played in theaters. This was the heart of the matter for New Zealand, whose delegation generally eschewed cultural pronouncements in search of a pragmatic formula to preserve its film hire tax, which deposited more money in government coffers than footage tariffs would.

The basic problem was that films are unusual, if not in cultural terms, then in how they are traded: a canister crossing the border is a good but the right to play its contents, a service, is the nub of the exchange. In principle, the ITO Charter covered goods but not services. A few countries, including the United States, which wanted films included, and Norway, which wanted them excluded, sought to add finance, shipping, and insurance under national treatment, but relented when others protested that services fell beyond the Charter’s scope. Negotiators also agreed that public utilities constituted services outside the Charter, yet at no time was the same logic applied to films. Unlike typical services, films were housed in a movable object, and objects ostensibly belonged in the Charter—thus analogies to concerts, plays, and opera were beside the point because the

37 UN 1947, E/PC/T/C.6/97, 121.
Charter neither covered non-traded services nor formally excluded them. Countries set on an exception for films wanted a clear statement that national treatment did not apply in this exceptional case, but to them, the cultural value of films, not the categorical distinction between goods and services, made the case special.

An alternative was a general exception for films. Exceptions in a specific article, like the one ultimately settled on for films, apply to that article’s terms only. However, general exceptions are universal to all of the articles in the whole chapter on commercial policy. Article 45 of the ITO Charter listed fourteen classes of exceptions, later whittled down to ten in the counterpart GATT Article XX. These provisions recognized sovereign rights to restrict trade to protect public order, health, welfare, the environment, and other civic concerns. A general exception for national cultural objectives could have provided an instrument to justify import quotas, internal measures on distribution and exhibition, differential taxes, and myriad other actions inconsistent with trade rules.

This idea was broached but went nowhere. The Czechoslovak representative, proclaiming films akin to statues, paintings, and other artistic treasures named in the general exceptions, proposed to add a paragraph “making it absolutely clear that nothing in this Charter is intended to regulate international or national distribution and exhibition of films.” Only New Zealand, seeing a possible solution for its film hire tax, spoke out in favor. Remarkably, Britain took the lead in shooting down the motion. Having asserted moments earlier that films raised “a very important cultural consideration,” its delegate reversed course, stressing the advantages of a limited derogation from national treatment over a general exception as a “reasonable compromise” in light of the “big commercial interest in films.”38 With that, a general exception was never seriously considered.

The solution eventually worked out went against a fundamental GATT principle, that quantitative controls should be discarded for tariffs, which were less intrusive and

easier to negotiate. With discussions in Geneva at an impasse, the problem was handed off to a subcommittee tasked to rework the national treatment clause, then to a special subcommittee on films. The British firmly stated that they would neither phase out film quotas nor leave their duration to the ITO, as the United States wanted, because they were “the most effective, perhaps the only effective method” of preserving a domestic industry. Making quotas negotiable while exempting them from national treatment, they insisted, was “the furthest we can go.”

Convinced that Britain was dead set on this stance, the U.S. delegation decided internally to accept screen quotas if agreement could be reached to ban all other internal restrictions. Already at New York they had conceded a sovereign right to protect movie industries in principle yet tariffs, it was generally accepted, were not a practicable means to that end. Instead of continuing to fight screen quotas, a U.S. advisor reasoned, the delegation should demand that they be handled like tariffs. That way, countries would have to bind screen quotas in their tariff schedules and commit to negotiate their future liberalization or elimination.

As U.S. officials slowly came to the recognition that quantitative restrictions could be acceptable, a decision by British authorities to impose a special tariff on movie imports drove the point home. In August 1947, with the Geneva talks winding down, the Treasury announced a duty of 300 percent on imported first prints. The purpose was

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40 “Multilateral Film Negotiations,” 12 June 1947, and “Screen Quotas and Import Duties,” 17 June 1947, RG 43, ITO Subject Files, Box 60.

41 A film’s value for customs purposes was set at one-quarter of “anticipated proceeds,” with three times this figure payable as duty, so the tax amounted to 75 percent of expected payments from exhibitors. The tariff order required distributors to forecast gross earnings, less income taxes and labor costs for distribution and exhibition, and pay the Treasury three-quarters of this total, “pending arrangements fixing final values.” “British to Tax Seventy-Five Percent of U.S. Film Profits,” New York Times, 8 August 1947,
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not to protect producers—though the tariff surely had this effect—but rather to stem
dollar outflows, which undercut currency stabilization. Months earlier, Treasury
authorities had devised a licensing system to manage the postwar backlog of U.S.
features awaiting release, but the Board of Trade demurred that the plan violated national
treatment under the draft Charter. However the summertime sterling crisis, a flurry of
capital flight after the restoration of convertibility, forced Treasury’s hand. While U.S.
authorities felt this “hastily-conceived measure, introduced in an atmosphere of financial
panic” had no protectionist aims, still they considered it “a bad example which other
nations may take up for protective reasons.” This episode stiffened their resolve to
“maintain consistently that the device of import duties should not be applied to film
imports” and to ensure that the ITO Charter offered a better means to protect national

The final language of GATT Article IV unfolded as trade negotiators hastened
progress on tariff schedules in the GATT. A special subcommittee on films composed of
the delegations at loggerheads—the United States, Britain, Norway, Czechoslovakia, and
New Zealand—worked out a compromise days after Britain’s film tariff was announced.
The subcommittee accepted without any substantive changes a U.S. proposal to add the
“established principle of the screen quota” as an exception to national treatment. To
appease New Zealand, the film hire tax was declared “the equivalent of a screen quota,”
not in form but “in purpose and effect,” and its nonconformity excused as functioning
“for purposes of administrative convenience.” A special notation in the ITO Charter
would allow New Zealand to continue this tax on film distribution on the same terms as
for screen quotas: a standstill in the margin of preference and a commitment to negotiate

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42 UN 1947, E/PC/T/175.
relating to Cinematograph Films,” was inserted as Article 19 in the draft ITO Charter and its equivalent in GATT Article IV.43

Further drama held up final approval, however. At the ministerial level, five countries lodged reservations. Two of them, France and the Netherlands, soon gave their assent. The French delegation had concerns about how screen quotas were defined, but withdrew its reservation and accepted the terms after receiving assurances.44 Two others, Norway and Czechoslovakia, again held out. Norway found the terms “unsatisfactory” and reiterated that films “are not first and foremost goods in a commercial sense, but services of a cultural character,” the first and only suggestion in the whole debate that films, as services, did not belong in the ITO.45 Czechoslovakia chimed in that “films should be explicitly excluded from the competence of the ITO” since they were “works of art… not just simple commercial commodities or industrial products.”46

The outcome hinged on the fifth reservation, Britain’s. Had the British demurred, it is conceivable that screen quotas could have been cut from the draft Charter and hence the GATT. Britain’s delegate called this a “temporary” snag pending “further discussion on our part with some countries,” but it dragged on for six weeks as the British stalled, alluding vaguely to “discussions taking place elsewhere.” As the Geneva round neared a close still they needed “a day or two” to finalize the details.47 The language on screen quotas barred all other restrictions on films, but the British were loath to give up quotas on film distribution. In return for lifting them, they demanded assurances that American

43 The Geneva draft of the ITO Charter appears in UN 1947, E/PC/T/186.
44 UN 1947, E/PC/T/A/PV/43, 53.
47 UN 1947: E/PC/T/A/PV/43, 29, 32; E/PC/T/EC/PV.2/22, 35; E/PC/T/TAC/PV/10, 43; and E/PC/T/TAC/PV/26, 31.
capital would continue to finance filmmaking in England. Only U.S. movie studios could issue such a pledge, adding a third party to the deal behind the scenes.

Making matters worse, the MPAA happened to be boycotting the British market over the tariff and all filming in England was on hold. Its members furthermore deplored screen quotas and were not ready to accept their inclusion in the Charter. However, U.S. trade negotiators pushed them to acquiesce. Without a deal, the British could insist on a return to the New York draft. This “would be a disaster” because the earlier text had “no provisions which would protect the motion picture industry from the multiplicity of restrictions and discriminations.” As a result, reversion to the status quo “would leave all countries free to discriminate against films.”48 Faced with this dilemma, the MPAA backed down and accepted a gentleman’s agreement with the British government on film financing. Finally, Britain withdrew its reservation and formally approved GATT Article IV at Geneva (Jarvie 1992, 412-413).

Although the U.S. delegation yielded on screen quotas, compromising its initial goal of free trade in films, still it considered the end result “almost clear gain” and an improvement on the New York draft. A State Department briefing paper crowed that when countries entered reservations on the films article, its side “offered no arguments… lest a prolongation of debate invite a burst of oratory from delegations influenced by cultural considerations.” The Geneva draft, however, was just a draft—to be finalized at the last session in Havana. Thus, the memo warned, U.S. officials must not publicize “the limitations which the Charter places… with respect to film regulations” since new participants might then notice “that Article 19 requires them to modify existing practices and stops them from future action along lines which they may favor.” The arrangement to ban trade restrictions other than screen quotas would remain in jeopardy “until Article

48 W.L. Clayton to Eric Johnston, 25 August 1947, and Wilcox to Johnston, 12 September 1947, RG 43, ITO Subject Files, Box 60.
19 has been finally and definitively adopted at Havana.”

**Finalizing Films at Havana**

The ITO Charter and the GATT were separate undertakings—the GATT could survive without the ITO—but one crucial codependence existed: the text of the ITO Charter was supposed to replace the corresponding GATT articles. If trade rules for films had been modified at Havana, the GATT would have automatically inherited these revisions—hence the U.S. delegation’s determination to not reopen the issue.

The Havana Conference reexamined the whole draft Charter and hundreds of amendments were proposed, mainly by countries not present at London or Geneva. All in all, the clause on films was much less of a focus than some other parts of the draft, and first-time participants, for whatever reason, paid it little heed. The conference agenda included thirty-three items on national treatment, including four for films. Two were minor textual changes proposed by Britain and adopted without debate, while the third, by Argentina, was based on a misunderstanding and later withdrawn.

Only the last item—a proposal by Czechoslovakia to delete the films article and insert an explicit, wholesale exclusion from national treatment—aimed to reverse the deal struck at Geneva. Only Norway backed the maneuver; Britain, France, the Netherlands, and New Zealand had been mollified by this time. A working party formed to review the article recommended no substantive changes to Article 19, leaving Czechoslovakia and Norway isolated. From the start these two countries had pressed to fully exclude films from the ITO Charter, but after reaffirming their conviction that films, as “works of

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49 “Film Negotiations,” Bliss to Brown, 27 August 1947, RG 43, ITO Subject Files, Box 60.


art,” belonged outside the ITO, both relented for lack of support for their cause. 53

In the final settlement of special trade rules for films, two puzzles remain. The first concerns Britain. The legalization of screen quotas, a U.S. initiative, accommodated British demands most of all. But why did Britain want films in the ITO Charter? Before the talks, British officials evidently planned to dodge the issue if at all possible (Jarvie 1992, 251-252). In the negotiations, however, they repeatedly favored including films with a limited exception from national treatment. In this debate, Britain occupied an unusual position. Cultural closeness to the United States fueled exposure to Hollywood pictures, making trade protection a national imperative. Yet it also facilitated exports, not only to the Commonwealth but to the United States, and British policymakers held great hope that the movie industry, adequately protected from U.S. competition, would earn foreign revenues and bring in hard currency (Swann 2000). Britain’s large market and cultural ties to the United States furthermore attracted investment from U.S. studios, providing leverage to bargain over film financing. Thus, it seems logical that the British delegation opposed wider exceptions for films and declined to join any push for a full exemption. They had a cultural motive to regulate films but also a commercial interest in trade; a limited exception best suited these dual interests.

The second puzzle, France, is harder to square. Unlike in 1927, when the French delegation led the defense of film quotas, its voice was barely heard in London, Geneva, or Havana. Linguistic difference gave France some cultural insulation that Britain lacked but not enough to give national films much of a boost. French proposals for the Charter, however, made no mention of films. 54 France’s delegate backed the bargain struck in Geneva, noting that while he “agreed in principle” with the sentiment that films were best handled outside the ITO, “some provision was needed regarding the practical aspects of


54 UN 1946, E/PC/T/C.II/12.
film regulations and Article 19 was acceptable.\textsuperscript{55} GATT Article IV closely followed the formula in the Blum-Byrnes Agreement of 1946, which is detailed in chapter 7, so it is reasonable to infer that France had already settled the issue bilaterally with the United States. France could have joined Norway and Czechoslovakia, more insistent champions of a cultural exemption, in a bid to claw back rights it had signed away to gain postwar financial aid, but all indications are that the government had independently arrived at screen quotas as the best device to manage movie imports and the GATT-ITO text on films legitimated its chosen formula rather than challenging it.

All in all, GATT Article IV set two major precedents. First, it subjected films to trade rules. Second, it established special terms to account for their special qualities—not as cultural goods, but as services traded in product form. Films may not have been the only services of this kind, but they were the only ones to earn much consideration from trade negotiators. Thus, films truly were exceptional: unlike any other good or service, they received their very own article. Yet the product-specific exclusions that killed the Convention of 1927 were kept out of the GATT in large measure through strong stands by Britain and France, countries that nonetheless favored special terms for films.

The GATT formula also has long-term significance. In legalizing screen quotas, Article IV recognized rights to regulate the cinema; by omitting mention of other internal measures, it implicitly banned them; and by treating screen quotas like tariffs, it made them negotiable. The first has been frequently invoked: many countries have justified state regulation—of theatrical exhibition, as explicitly intended, and also television broadcasting, as the next section explains—on the basis of Article IV. The second invalidated the many other measures previously used to restrict foreign films, though it would not always be rigidly enforced. And the last was practically forgotten. Although Article IV made screen quotas negotiable like tariffs, only once in the history of the

GATT did a government agree to bind the rate; that was West Germany in 1951, and the concession was withdrawn five years later (WTO 1994, 210). GATT rules could spread the religion of open trade, but they could not force nonbelievers to convert.

**Television and the GATT**

Multilateral bargaining over trade and culture shifted from movies to television in 1961, when the United States advanced a GATT proposal on trade in television programs. The proposal spotlighted regulations mandating the use of national-origin program material on television, which the U.S. government considered a violation of national treatment. Broadcasting requirements of this nature resembled screen quotas, but GATT Article IV covered only cinema exhibition. The United States therefore sought to open a dialogue that would lead to special rules for television programs along the lines of those negotiated for films in 1947.

This overture met resistance. A Working Party was formed to study the matter, but participants could not agree on a solution—an impasse that consigned television to a legal void in the trade regime. For the next thirty years, the United States persisted in making an issue of behind-the-border barriers to trade in program material. Finally in the Uruguay Round this dispute came to a head, as the chapter explains later.

**National Positions on Television Programs in the GATT**

The central question in this standoff involved whether trade in television programs was subject to GATT discipline. If national treatment extended to television transmission, then restrictions on the broadcast of imported program material ran afoul of trade rules. Alternatively, if national treatment did not apply to telecommunication, then governments had full discretion to regulate broadcast media to meet cultural, economic, or other objectives.

The GATT Secretariat lacked independent authority to interpret trade rules and at the time, dispute procedures were primitive. The United States did not ask for a panel on
complaints—essentially, a tribunal of experts—to review the case, nor did it name countries with policies it considered in breach of national treatment. There was no legal claim to make: no trade rules existed for television, which was on the air in just one other country, Britain, when GATT Article IV was drafted. Yet recorded films and videotapes for broadcast transmission were tradable goods like any other as the United States saw it, grounds for inclusion in the GATT. Only negotiation and consensus could settle the matter, so a working party—an impartial mechanism for striking compromises between disputants—was established instead of a panel.

Too few countries joined this discussion and there is too little information about their positions to impute national preferences for many GATT participants. A thorough assessment of the book’s argument is therefore out of the question. The episode deserves attention nevertheless as a connective bridge between the creation of trade rules for films in the ITO Charter and the friction over audiovisual services in the Uruguay Round. And while a precise analysis is not possible, some suggestive observations can be made.

One revealing piece of evidence is the composition of the working party, named the “Working Party on the Application of GATT to International Trade in Television Programs.” Anywhere from five to eighteen states in all made up a working party and it was critical to the functioning of the GATT to include countries with strong preferences on the issue at hand. As a result, the roster of participants reveals who had the strongest stakes in the matter, though neutral parties could be mixed in. By convention, the United States, the country raising the issue, was appointed to the working party, which included nine others: Australia, Austria, Brazil, Canada, France, the German Federal Republic, Japan, Sweden, and the United Kingdom.

Two characteristics of this roll call stand out. First, these were the world’s largest television markets, measured in terms of televisions in use. Of the ten countries in the GATT with more than one million receivers, the working party included all except Italy;
the only country on the working party with less than a million receivers was Austria.\textsuperscript{56} Second, these countries on average tended to have closer cultural ties to the United States than GATT participants as a whole, an exception being Japan, the world’s third largest television market and the first in culturally faraway Asia or Africa to launch television service. English-speaking Britain, Canada, and Australia, though not tiny New Zealand, were assigned to the working party; so were Germany, France, and Sweden, but not small Northern European countries such as Belgium, the Netherlands, Denmark, or Norway. The group overrepresented countries with the best prospects for developing homegrown programming, and several faced heavy exposure to American television—particularly Britain, Canada, and Australia, which also had privately-owned television stations. It is predictable that these countries held a strong interest in whether or not the GATT would be extended to cover television.

A second revealing piece of evidence is the identity of the biggest critics of the U.S. proposal: Britain and Canada. Britain, the second largest television market—but with one-quarter the number of television receivers as the United States—issued the strongest rebuttal. The British delegate emphasized competition from the United States and its influence on the citizenry. On the commercial front, he asserted, “the imported product… had a large home market [and] was made available often at very low prices with which… in a developing territory, the domestic producer could not compete.” This disadvantage “raised wider issues… than international trade in, say, pencils” because it was a government’s duty “to protect the traditions and culture of their countries, as the social impact of the television screen was much greater than that of the cinema screen ever was.”\textsuperscript{57} Canada, the country with the fifth most television sets worldwide and almost no cultural insulation, seconded the British position, noting that the issue “could

\textsuperscript{56} Data are from UNESCO 1963.

\textsuperscript{57} GATT 1961, SR.19/9, 148.
not be considered on a purely commercial basis in view of the impact which television programs might have on public opinion and other matters.”

These claims reprised past struggles over the cinema: the commercial advantage of U.S. program material demanded actions to level the playing field—not to lift the incomes of domestic producers, but to preserve cultural ideals that imports placed at risk. As of 1961, Americans still owned more television receivers than the rest of the world combined; this head start, the British seemed to say, made every country including theirs “a developing territory.” Yet now state action was even more imperative, they suggested, because television reached into the home. In an attempt to blunt these outside pressures, Britain, along with Canada and Australia, had set itself on a collision course with the United States. It is not surprising that two of these three loudly objected to the idea of placing television under GATT discipline. The only other large country with commercial broadcasting was Japan, which enjoyed greater cultural insulation; there is no record of the Japanese delegation speaking on the U.S. proposal.

In continental Europe, broadcasting remained under tight state control, limiting trade even in countries with cultural proximity to the United States. Viewed in this light, it is interesting that France raised a different concern with the U.S. proposal. Its brief, an annex to the Working Party report, made no mention of culture or ideas, or the threat the United States posed. Instead, it countered that satellite technology could soon completely transform broadcasting. Until this development was fully understood, the French argued, the GATT should defer the question of television. The brief, it seems, apprehended that the rationale for incorporating television programs as trade in goods would disappear if electronic signals ever replaced shipments of films and videotapes. Delay offered an alternative strategy for keeping television out of the GATT.

58 GATT 1961, SR.20/4, 47.

59 GATT 1962, L/1741, 8.
These first GATT deliberations over television, it turns out, set the terms of an intractable debate that would rage for three trade rounds over three decades. Much like the earlier feuds over movies, the United States, on one side, pushed for states to take their hands off television; Britain, other English-speaking countries, and Western Europe, on the other side, steadfastly defended government involvement in broadcasting.

**Updating the GATT for the Television Age**

The U.S. proposal to incorporate television programs into the GATT raised the question, would the special rules for films in Article IV work for television too, or was some other method needed to balance the principle of national treatment with state rights to regulate broadcasting? Behind this question lurked the pivotal issue: were television programs goods like films for theatrical exhibition, subject to GATT rules, or services outside the GATT?

Three incompatible opinions emerged in this debate. Two points of view agreed that the GATT covered television programs but differed on the adequacy of Article IV. The third disputed that the GATT applied at all. Each perspective drew its own analogies to films, and distinctions between the cinema and television, to advance its case.

The United States forced the issue, arguing that television programs were like films and hence within the purview of the GATT. The GATT covered films therefore it must cover television programs too, the U.S. proposal reasoned, because both were traded in physical form. But television was too unlike the cinema, the United States added, for Article IV to fit: television program material was generally recorded to videotape, not film, and Article IV expressly covered only exposed films to be aired at cinemas. As a result, the exception from national treatment for screen quotas did not apply to television, yet governments nevertheless had an understandable interest in television “because of its

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60 The next three paragraphs draw from two U.S. statements, GATT 1961, L/1615 and L/1646.
importance as a cultural and informational medium.” Since trade in program material raised some of the same problems as trade in films, television—like films—needed its own set of GATT rules.

The United States proposed draft rules with three components. First, internal requirements for television programming should be transparent and take the form of quotas defined in terms of total broadcast time, exactly like screen quotas at cinemas. Second, their liberalization or elimination should be negotiable in future trade rounds. Third, there should be limits on how much airtime could be reserved for domestic programs to guarantee imported material “fair access” and “reasonable” show times in daily program schedules. Points one and two followed Article IV but the third restricted national discretion more than Article IV did.

The logic for introducing limitations on screen quotas for television when the GATT had established no such boundaries at the cinema rested on the allegedly different political dynamics of the two media. The central distinction in the U.S. proposal was that television lacked commercial incentives and free enterprise, which were characteristic of the cinema. Competition in film exhibition forced cinemas to screen movies that would sell tickets. This profit motive to acquire the best features, whatever their national origin, gave cinema owners a vested interest in opposing excessive quotas. Thus, the framers of the GATT thought it “safe to draw up Article IV on the assumption that popular and commercial pressures would prevent a government from limiting too drastically the use of imported films.” The same did not hold for television, however. Whereas moviegoers could pick their theater and movie, television viewers selected from a limited array of channel listings. Moreover, television stations did not have to sell tickets to earn money, and broadcasters whose proceeds came from license fees had no incentive to air programs that viewers wanted to see. Insulated from market pressures in these ways, the United States contended, broadcasters simply could not be counted on to put up a fight against undue restriction on imports.
The working party report noted that “fair access,” as the United States demanded, was difficult to define and would entail new GATT obligations, an indication that other countries, not surprisingly, objected to this proviso. Britain’s delegate openly criticized the U.S. proposal, disputing that television was unlike film. Broadcasters wanted viewers too and besides, he countered, the GATT could not bind quotas for television but not for film. In his opinion, movies and television programs were too alike for trade rules to differentiate: videotape and film served the same purposes; tariffs did not work; screen-time quotas were an appropriate alternative. Given these similarities, the GATT needed only to “confirm that Article IV applied to films for showing on television as well as to films for showing on cinema screens.”

Some others in the working party felt that “television bore more resemblance to a service than to… trade in physical commodities.” This opinion held that the GATT did not pertain to television at all. France’s delegation emphasized that television mixed recorded material with live transmission, yet trade rules could not treat one broadcast as a good and another as a service. In effect this viewpoint carried the day by impeding consensus over whether television belonged in the GATT, the one point of common ground between the United States and Britain.

Until countries could agree on whether and how national treatment applied to television transmission, this entertainment medium would remain stuck in an unfilled cavity in the global trade regime. The United States revised its proposal later in 1962 and again in 1964, each time conceding the right to regulate television programming while pushing for restrictions to be “limited to a minimum” to facilitate “the greatest freedom

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61 GATT 1962, L/1741, 4-5.
63 GATT 1962, L/1741, 4-5.
of international trade in television programs.”

Its efforts again went nowhere. Rather than drop the matter, the United States pushed to include television in the next trade round. As the GATT turned attention to nontariff barriers, the United States repeatedly spotlighted programming restrictions in Britain, Canada, and Australia—all English-speaking markets with commercial television services. These governments countered that Article IV condoned derogations from national treatment for television.

During the Tokyo Round of trade negotiations, a U.S. offensive against barriers to entertainment exports targeted three types of measures: programming requirements on television, still unsettled in the GATT; screen quotas, permissible but negotiable under Article IV; and assorted other infringements of national treatment such as internal taxes and licensing schemes for movies that persisted in several countries. In all, the United States identified 38 nontariff measures on filmed entertainment in 24 GATT parties. Its request list for the Tokyo Round asked Britain, Canada, and Australia for concessions on television programming. This campaign made no headway, however.

Two developments forced television onto the trade agenda in the Uruguay Round, raising the temperature of the dispute. The first was the decision to tackle services under the aegis of the GATT, which could not have occurred, ironically, without the strong support of European countries, Canada, and Australia, the strongest advocates of leeway for culture in trade rules. A 1981 Secretariat paper noted that the GATT already covered “services incorporated in goods,” notably films, and its illustrative list of barriers to trade in services included television broadcasting. Ongoing discussions resulted in the launch

64 GATT 1962, L/1908; GATT 1964, L/2120.
68 GATT 1981, CG.18/49.
of the Uruguay Round in 1986 with plans to negotiate an agreement on services. From the outset no services, not even television, were off limits for discussion.

The second development was the adoption by European countries of a Convention on Transfrontier Television in 1989. A section on “cultural objectives” in the Convention instructed parties to reserve half of airtime for “European works.”\footnote{69 UN Treaty Series vol. 1966, I-3361, \url{http://treaties.un.org/doc/publication/ants/volume_1966/volume-1966-a-33611-english.pdf}, 270.} Weeks earlier the GATT had established new dispute settlement procedures and the United States swiftly reacted, claiming that the Convention contravened GATT rules.\footnote{70 GATT 1989, DS4/1.} The EC countered—as France had argued in 1962—that television transmission was a service, placing it outside the competence of the GATT. Until such time as a services agreement brought television into the GATT, the EC asserted, the request for consultations was out of order.\footnote{71 GATT 1989, DS4/4 and C/M/236, 33-34.}

The EC was technically correct—no basis existed to send the U.S. complaint to a panel—but the confluence of the two initiatives, a regional agreement on television and multilateral discussions on services, thrust the unsolved problem of trade in television programs into the Uruguay Round. The Transfrontier Television Convention extended content regulations Europe-wide, making programming restrictions once more a pivot of conflict with the United States. And multilateral action on services made entertainment media broadcast outside the cinema an unavoidable subject for the GATT, ensuring that the goods-or-services conundrum could no longer stall bargaining over trade rules.

**Audiovisual Services in the Uruguay Round**

The GATS was the first-ever multilateral agreement on trade in services. In all, 127 countries signed this historic agreement at the close of the Uruguay Round.
The GATS is structured in three parts. First, the framework agreement extends legal principles similar to those for trade in goods to the realm of services. Second, the annexes adapt provisions in the framework agreement to fit the peculiarities of certain service sectors. Third, the national schedules list the specific commitments that countries individually undertake, much like the tariff bindings in GATT agreements for goods.

Scheduled commitments in the GATS follow a “positive list” approach, where the obligations to grant market access and national treatment are optional on a sector basis. In this format, states commit to these obligations by including (“listing”) a sector in their schedule; they can choose to grant neither, one, or both in any sector. They can opt out by leaving a sector off their schedule, declining to guarantee access or equal treatment. States also can undertake partial commitments by inscribing qualifications (“limitations”) in their schedules. These limitations often note specific nonconforming measures that a government intends to keep in place or that it reserves the right to adopt in the future.

The positive-list format built great flexibility into the GATS. Whereas the GATT is designed for trade barriers at national borders, the GATS mainly deals with restrictions inside the border. In this sensitive realm of domestic regulation of services, one-size-fits-all trade rules were impractical; states time and again hesitated to accept obligations in one sector that they would approve in others. The solution to reconcile varied national preferences was to allow states to negotiate their own preferred level of commitment for each service. The weak point in this method was that states would remain free to restrict market access and deny national treatment in any sector they had not bound. Flexibility simplified bargaining over the framework text, but it also opened a path for governments to fence off sectors of their choosing. Any regulation in any service, whether for cultural or other purposes, can be introduced, maintained, or tightened as long as no promises in the scheduled commitments are broken.

Significantly for trade and culture, no sector was formally excluded in the GATS: the agreement covers film distribution and exhibition, audio and video distribution,
television and radio transmission, and also live entertainment.72 An outright exemption for audiovisual services was dismissed early in the talks; participants later debated two alternatives to accommodate the cultural importance of audiovisual services. The first was a general exception in the framework agreement for services of a cultural nature. The second was a sector annex to adapt the framework rules to the “cultural specificities” of the sector. Neither approach was adopted, however: the GATS general exceptions do not include cultural policy objectives, and there is no annex for audiovisual services. The method that prevailed was that reservations for cultural measures “should be taken into account in commitments in national schedules,” since there is no place for them in the framework agreement or its annexes.73

It was a simple solution, yet friction over how to accommodate trade and culture in the GATS nearly wrecked the Uruguay Round. One of the last stumbling blocks right to the end, audiovisual services threatened to derail this historic agreement. At the end, the dispute came down to the two major powers in the trading system, the United States and the EC. Along the way, multilateral bargaining shaped the GATS and its treatment of the audiovisual sector.

**National Positions on Culture in the GATS**

The creation of trade rules for services opened another chapter in the continuing conflict

72 Audiovisual services are divided into six areas according to Central Product Classification (CPC) code. Two areas correspond to film: motion picture and videotape production and distribution services (CPC 9611) and motion picture projection service (CPC 9612). Two others correspond to broadcasting: radio and television services (CPC 9613) and radio and television transmission services (CPC 7524). The fifth area is sound recording and the sixth is for unclassified audiovisual services, such as multimedia services. WTO 2010, S/C/W/310.

73 GATT 1990, MTN.GNS/AUD/2, 3.
over trade and culture. In the process, countries took a range of stances on this issue. Documentary records from the Uruguay Round negotiations provide ample evidence on national positions on audiovisual services in the GATS. For the purposes of categorizing these positions, this analysis draws from four sets of records: meeting minutes, formal proposals, offer lists of sector commitments, and the national schedules in the GATS.

One set of countries wanted a cultural exception, essentially a general exception in the framework text for “cultural values or relating to cultural services.” This was Canada’s preferred solution, and the Canadian delegation pushed for “a general exception based on cultural values which would apply to all existing and future cultural industries.” In the Audiovisual Working Group, only one delegate, Egypt’s, voiced sympathy for Canada’s overture.

A larger group of countries favored a sector annex for audiovisual services, an approach labeled “cultural specificity” by the EC, its sponsor. Cultural specificity would

74 Meeting minutes are from the Group of Negotiations on Services, or GNS, the body in charge of designing the framework agreement, which reported on forty-five meetings, and the Working Group on Audiovisual Services, formed to advise the GNS on the specificities of this sector, which reported on two meetings.

75 Fifteen GATT participants, counting the EC as one, filed eighteen proposals for the framework text, and the EC also submitted a draft annex for audiovisual services.

76 Eighty-six parties to the negotiations submitted offers, many of which were revised multiple times as talks proceeded.

77 All 127 signatories to the GATS filed schedules of specific commitments, which show whether or not a party listed audiovisual services, and what level of commitment to market access and national treatment it accepted.


79 GATT 1990, MTN.GNS/AUD/1, 2-3.
authorize “special treatment” for “portions of the audiovisual sector which fell under
national cultural policies.” For the EC, this option offered two advantages: first, the
annex could be designed to shield cultural policies from dispute settlement, whereas
resort to a cultural exception would remain subject to review for compliance with the
terms and conditions for general exceptions; second, the annex could place cultural
policies off limits in future negotiations, in effect excusing the sector from the principle
of progressive liberalization. In this way, the annex would automatically define cultural
policy objectives as legitimate and nonnegotiable. Twenty-four countries in all can be
associated, one way or another, with this position.

A third group of countries accepted specific commitments in audiovisual services.
Eighteen states listed the sector in their national schedules. Few of these commitments
covered every subsector and mode of supply, however, and several governments
inscribed limitations on market access and national treatment in subsectors with bound
commitments.

This categorization of national positions leaves 83 out of 127 GATS signatories as
nonresponsive; none of these countries listed audiovisual services in their schedule, filed
a proposal pertinent to the sector, or voiced a position in any meeting. Many of them

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80 GATT 1990, MTN.GNS/AUD/1, 8.
81 This tally includes the twelve EC members, which collectively proposed this approach. In addition,
Austria, the Czech Republic, Finland, Iceland, Norway, the Slovak Republic, Sweden, and Switzerland
included audiovisual services in their offer lists and then withdrew these offers when no agreement on
cultural specificity was reached. Australia, Brazil, Chile, and Cuba voiced support for the EC proposal.
See GATT 1990, MTN.GNS/AUD/2.
82 These eighteen countries were the Central African Republic, the Dominican Republic, El Salvador,
Gambia, Hong Kong, India, Israel, Japan, Kenya, Lesotho, Malaysia, Mexico, New Zealand, Nicaragua,
South Korea, Singapore, Thailand, and the United States.
presumably felt indifferent to the outcome; those with an interest in the matter, for whatever reason, did not act on it publicly. Without more information, it is impossible to know the breakdown of indifferent and inactive delegations.

The large number of countries in these negotiations allows more rigorous analysis than the visual snapshots presented in the tables for earlier trade rounds. In other work, I have estimated statistical models of national positions on audiovisual services in the GATS, using a categorical dependent variable that distinguishes whether a country supported a cultural exception or sector annex, listed audiovisual services in its national schedule, or took no position (Chase 2011). For simplicity, I will summarize what these models say about the book’s argument without detailing all of the methods, measures, and results.

Two results stand out. First, cultural proximity to the United States increased the chances of a state supporting either a cultural exception or a sector annex, but only if the national market was large. Second, countries with larger markets were more inclined to back one of these options if they were culturally close to the United States, and less likely to do so if they had the cover of cultural distance. These findings indicate that the two factors the argument emphasizes, market size and cultural distance, interactively shaped national positions on audiovisual services. This is systematic and persuasive empirical evidence that culturally close large countries pushed the hardest to retain full autonomy to regulate the audiovisual sector.

The statistical models are not trouble-free, it must be acknowledged. Almost two-thirds of all countries in the negotiations took no stand on the issue. Had the agenda been structured differently, some might have taken a position; conceivably, others could have adopted a different stance. Another issue is that EC countries negotiated as one and the delegation advanced common proposals on audiovisual services. Yet members did not all share common interests; the politics behind this position-taking, however, played out behind the scenes. The models cannot pick up unobserved variation in either form, a
Disclaimers aside, the available data capture national positions for a large number of countries, and these positions neatly conform to the book’s argument. The finer details of when and where the cultural issue emerged, and how multilateral negotiations affected the handling of audiovisual services, are for the narrative account to tease out. In the end, the GATS neither ticketed the sector for liberalization nor excused it from trade rules. A close look at the evolution of trade-culture debates in the Uruguay Round helps to make sense of this strange outcome.

Accounting for Culture in the GATS

The Uruguay Round stirred up anew the feud over trade in television programs begun in 1961. In the meantime, the technological advances detailed in chapter 2 had significantly raised the stakes: satellite and cable had extended the geographic reach of television, on-demand offerings were being launched, and home video was firmly established. In the GATS negotiations, three central questions emerged. First of all, should the GATS apply to audiovisual services? If audiovisuals were included, should there be an exception clause for cultural measures? Or could the framework agreement be designed to integrate audiovisuals into trade rules for services while reserving room for regulations on cultural grounds?

A wholesale exclusion for audiovisual services was rejected early in the talks. Its sponsor, Canada, put forward a cultural exemption at the Montreal ministerial meeting in 1988, using the template of the free trade agreement (FTA) signed earlier that year with the United States. Article 2005 of the FTA specifically excluded “cultural industries,” which it defined as movies, home video, television, radio, recorded music, and print media. GATT documents contain no record of debate on Canada’s bid to exempt cultural industries, but the results are clear. An EC negotiator writes, “no one supported this effort, not even the Community.” While the EC shared some of Canada’s concerns—at
least for movies, video, and television—it differed on logistics: an exemption would invite attempts to exclude other sensitive sectors; moreover, excluding cultural industries, as the FTA had done, freed the United States to retaliate at will (Falkenberg 1995, 429-431). Thus, the EC parted company with Canada, advocating complete sector coverage in the GATS with no exclusions. Lack of support for Canada’s motion shut the door on a cultural exemption. Before the Montreal meeting, the GNS chairman had reported some interest in sector exclusions “for certain overriding considerations (e.g. security and cultural).” Yet the ministers agreed that no services should be ruled out. To the contrary, they called for “the broadest possible coverage of sectors.”

The possibility of a cultural exception received more serious consideration. The general exceptions in the GATS text were patterned after GATT Article XX, which lists a series of domestic policy objectives important enough to justify breaking trade rules. The question was whether trade in services warranted additional exceptions not present in the GATT, such as for cultural measures. This required some set of working principles to distinguish legitimate policy goals from disguised protectionism. Sector studies carried out by the GATT Secretariat found that states regulated services for many purposes using a range of means; both general aims and sector-specific considerations created regulatory diversity across countries and services. Governments often considered many of their own laws necessary and valid, but were less forgiving of the policies of trade partners. The mandate of the GNS was to develop framework principles that would encourage liberalization and at the same time “respect the policy objectives of national laws and regulations applying to services.”

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83 GATT 1988, MTN.GNS/18, 4; GATT 1989, MTN.GNS/22, 10.
84 GATT 1988, MTN.GNS/21, 3 and MTN.TNC/7(MIN), 40.
85 GATT 1985, MDF/7; GATT 1986, MDF/31.
86 GATT 1987, MTN.GNS/5, 1.
How to accomplish both ends at once was for the GNS to work out. Discussions focused on distinguishing reasonable and unreasonable policy goals, and then designing rules that permitted the reasonable and prohibited the unreasonable. As an EC proposal phrased it, the policy aims of “appropriate regulation” should be “accepted as necessary or desirable” and therefore “respected” by trade rules as legitimate, while “inappropriate types of regulation,” such as “economic protection,” were fair game for the GATS to root out. Distinguishing reasonable from unreasonable, however, rested on abstract value judgments, often tainted by interests in defending specific regulations.

A sweeping general exceptions clause appealed to several developing countries as a means to legitimate existing regulations. Infant industry and development rationales were readily rejected as protectionist in intent, making “cultural values” an easy catch-all for policies that were hard to justify on other grounds. In GNS exercises to “test” the operation of rules and concepts in the draft framework agreements for specific services, Brazil, Argentina, Malaysia, India, Chile, and Korea highlighted cultural concerns in telecommunications; Korea cited “cultural traditions” and “cultural reasons” in financial and professional services; and Mexico referenced “cultural values” in professional services. Outside the sector context, Peru, Romania, Poland, India, and Brazil supported a general exception for cultural objectives. Proposals by Peru, Austria, Brazil, India, and Malaysia contained some sort of cultural exception, while two draft frameworks, one submitted by eleven Latin American countries and the other by seven African and Asian countries, included “cultural and social values” on an extensive list of general exceptions. None of these remarks and proposals, it bears emphasizing, was set in the

87 GATT 1987, MTN.GNS/W/29, 4-5.


89 A list of these documents is available on request.

90 GATT 1990: MTN.GNS/W/95, 9 and MTN.GNS/W/101, 11.
context of audiovisual services.

Amidst this groundswell, developed countries pushed to limit the scope and number of general exceptions in the GATS. Most striking is the behavior of delegations with cultural concerns for audiovisual services. The EC brushed off claims of cultural policy goals in telecommunications; Australia and Canada also argued against frivolous exceptions.²⁹¹ Though all three clashed with the United States over movies and television, these opposite sides joined forces to beat back attempts to poke loopholes in the GATS. The EC warned against “the dangers involved in providing for exceptions on cultural grounds,” while the United States added that “it would be very difficult to provide for cultural exceptions in the framework.”²⁹² Proposals and drafts by Australia, Switzerland, New Zealand, the United States, the EC, and Japan all argued for the fewest possible exceptions and contained no references to cultural policy.²⁹³ Against this opposition, a cultural exception stood no chance. A first draft of the GATS text listed “cultural values” as a possibility, marked in brackets to denote a lack of consensus on its inclusion.²⁹⁴ In the next draft, the passage disappeared never to return.

An exception for cultural industries likewise did not pan out. Canada, having failed to secure an outright exclusion at the Montreal ministerial, tested the waters on a limited exception for cultural industries in the Working Group on Audiovisual Services. Again its model was a clause like the one in the FTA, but with additional language to “limit abusive practices.” Once more, Canada found little support, even from states that shared some of its concerns. Australia considered a cultural industries exception “a large loophole” in the GATS and the EC as well found it “too broad.” These delegations, in

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²⁹³ A list of these documents is available on request.

²⁹⁴ GATT 1990, MTN.GNS/35, 11.
effect, sided with the United States, which reiterated its “strong opposition to a general exception for cultural values.” Japan likewise “warned against using [cultural] values as a means to exclude… audiovisual services.”

Canada’s second bid to shield cultural industries in the GATS is significant not for its failure—consensus-based decision rules made it a longshot anyway—but because the EC lined up against it. Inside the EC, Canada’s proposals had many sympathizers. The audiovisual community and all of the Culture Ministers were lobbying fervently for a cultural exception (Falkenberg 1995, 431; Paemen and Bensch 1995, 233). So were France, Spain, and Belgium in the Council of Ministers (Messerlin 2000, 306-307). The European Commission, however, saw two flaws in these formulas: a cultural exception was too expansive, an EC delegate argued in the GNS, so it risked being used against European exports; and a general exception would not shield cultural policies that dispute panels might find unduly discriminatory or protectionist in intent.

The European Commission’s preferred solution to these problems was a sector annex to protect the “cultural specificity” of audiovisual services. Sector annexes offered a means to adapt the GATS framework agreement as needed to fit the peculiarities of specific services. Several countries, including the United States, considered annexes essential for finance, insurance, and telecommunications, services that were “extremely complex and heavily regulated in most countries.” A key part of the negotiations was to determine what sectors were special enough to warrant their own annex. This task came into focus after the draft framework text had been completed and the GNS split into sector working groups in the run-up to the Brussels ministerial in 1990.

Cultural specificity, the EC explained, was “not an overall exception applying to cultural industries broadly defined.” Rather, it would grant “special treatment” only to

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95 GATT 1990, MTN.GNS/AUD/1.
96 GATT 1990, MTN.GNS/32, 22.
“portions of the audiovisual sector which fell under national cultural policies.” The EC delegation elaborated:

The treatment of audiovisual services should be twofold. First, the provisions of the framework should apply to those segments of the sector which could be subject to multilateral liberalization without impinging on key objectives of a country’s cultural policy. Second, annotations might be necessary for those segments of the sector which embodied some of these objectives in order to adapt the application of framework provisions to their specificities.97

In this setup, audiovisuals consisted of two segments, a non-cultural segment, governed under the framework agreement, and a cultural segment, which would be handled in the sector annex. This way, GATS principles would apply to audiovisual services but with explicit understandings to respect cultural policies as legitimate and nonnegotiable.

To give this formula substance, the EC submitted a draft framework agreement with an audiovisual sector annex. The draft framework contained no cultural exception; instead, it specifically accepted measures “necessary to meet a sectoral exception enumerated in a sectoral annex.”98 The sector annex in effect waived nondiscrimination, national treatment, and market access obligations for “audiovisual services with cultural content,” subject to the standard requirement to not discriminate arbitrarily or disguise restrictions on trade, and it shielded the self-styled cultural segment of the sector from the obligation to participate in progressive liberalization.99

The EC plan drew a mixed reception. Sweden, speaking for the Nordic countries,

97 GATT 1990, MTN.GNS/AUD/1, 3, 7-8.
99 GATT 1990, MTN.GNS/AUD/W/2.
agreed that an annex would help to address the “distinct linguistic specificities” of audiovisuals, and Australia found it “a fair starting point” for devising a means “to legitimize the cultural objectives of certain national policies.” Others, however, deemed a sector annex for audiovisual services unnecessary. At one extreme, Canada persisted in favoring a cultural exception over a sector annex. At the other end, the United States and Japan dismissed the idea as tantamount “to a wholesale exception of the audiovisual services sector from the coverage of the framework agreement.” New Zealand likewise considered it “too broad and sweeping.”

These deliberations left unresolved whether the GATS would have an audiovisual sector annex and what form such an annex would take. Saving the toughest problems for last, negotiators shelved the trade-culture issue until the end of the Uruguay Round. This showdown pitted the EC against the United States in the final push to complete the most ambitious package of trade agreements ever.

Closing the Uruguay Round

The trade-versus-culture cleavage formed one node of a larger network of cross-linkages among issues that had to be resolved to close the Uruguay Round. In the GNS, not only audiovisuals but also maritime transport and financial services were mired in discord. At the higher plane of the several agreements in progress, thorny problems such as aircraft subsidies and agriculture remained unsettled.

In the request-and-offer process of exchanging commitments for services, the EC offered to list “non-cultural” audiovisual services but conditioned this offer on approval of a sector annex. Verbally, the EC suggested “consolidation,” which its negotiators defined as a standstill on television quotas—in effect, a pledge not to tighten existing

100 GATT 1990, MTN.GNS/AUD/2, 1-2.

requirements or to extend them to new technologies when present legislation expired—in return for U.S. acceptance of the legality of these regulations (Paemen and Bensch 1995, 233-234). Eight other countries, each one a party to the Convention on Transfrontier Television, followed this lead, offering to list audiovisual services in their schedules with limitations for measures already in force.

As negotiations on services schedules picked up, the United States blasted the “very poor… overall quantity and quality of the offers” on audiovisuals. The EC was its main target as the EC offer met only one of the U.S. delegation’s goals: consolidation would keep emerging technologies such as on-demand services quota-free. However, the EC rebuffed two other U.S. demands, that it relax programming restrictions on television and grant national treatment for audiovisual subsidies to allow U.S. companies to earn grants for production activities in the EC. A core EC objective was to gain legal shelter for these other policies, placing them off limits in future negotiations.

The publicity surrounding U.S. pressure on quotas and subsidies mobilized the European audiovisual community to again campaign for a cultural exception. Actors and directors across Europe implored the European Parliament to press trade negotiators not to concede. French officials repeatedly lobbied the lead EC negotiator, Leon Brittan, to take audiovisuals off the table. European culture ministers meeting at Mons, Belgium, issued a statement calling for a cultural exception to preserve six nonnegotiable cultural policies. With the deadline for concluding the Uruguay Round approaching, the typically reserved GATT Secretariat shot back. A Director-General’s statement chided “serious misunderstandings… in [t]he debate in Europe” and tersely noted that both an outright exemption and a cultural exception had been “discussed and rejected” years earlier, with


the approval of the EC, which “considered that a cultural exception would go too far and allow abuses.” Wrapping up this riposte, the press release commented that while the EC had spoken of cultural specificity as an alternative, “[s]o far the [EC] has not given any precise content to this notion of cultural specificity.”104

Two months later—four days before the cutoff for closing the Uruguay Round—the EC finally filed a proposal “to insert language into certain provisions of the GATS regarding the cultural specificity of the audiovisual sector.” The motion recommended annotations in the framework agreement to waive nondiscrimination for film and television co-productions, limit the application of national treatment to permit audiovisual subsidies, and excuse the audiovisual sector from progressive liberalization. The GNS, intimating that consensus once again could not be reached, reported that “a number of participants... registered reservations.”105

Why the EC waited so long to renew its push for cultural specificity is not clear. Appearances suggest that the European Commission got caught with no middle ground between the hard line taken by the United States and the intransigence of stakeholders in the EC. The U.S. delegation hung tough in pressing for liberalization of restrictions on prime-time and cable programming, with a pledge to keep pay-television services quota-free. In the final hours, however, EC negotiators, under a tightened mandate from the Council of Ministers, reversed the standstill offer for future media while continuing to rebuff U.S. demands for traditional media. Their last best offer was to list audiovisual services in the scheduled commitments subject to the reservation that programming requirements could be continued on television and extended to new technologies. The United States refused. In response, the EC withdrew its offer to schedule audiovisual

104 GATT 1993, NUR 069, 1, 5.

services, declining any commitments for market access and national treatment.106

With the Uruguay Round finished, a French official declared: “We got what we wanted from the start, which is basically the cultural exception.”107 But this “agreement to disagree,” as it is often called, did not remove audiovisual services from the GATS; it simply took the sector out of the EC’s scheduled commitments in this opening phase of negotiations. An appraisal from the U.S. side concurred that the freedom to leave sectors off the positive list made the outcome “hardly much of an improvement” over the status quo pre-GATS (Siwek 2004, 12). Yet the built-in agenda of progressive liberalization in Article XIX stipulated continuing negotiation to steadily remove barriers to services trade, including the audiovisual sector. The Uruguay Round therefore constituted a first step, not a final verdict. Agreeing to disagree deferred the issue to a not so distant future, as the GATS set January 2000 as the deadline for restarting talks on services.

In the big picture, the positive-list format made it possible for the GATS to cover audiovisual services, without any exclusion, exception, or annex, because states were free to choose whether or not to liberalize or bind existing policies. This approach guaranteed non-listing as a default option in any sector where agreement on an alternative formula failed to form. Countries intent on special recognition for culture in the GATS could not prevail over the United States (and Japan) in consensus-based bargaining, even if they had advanced one common blueprint. Yet the positive-list model ingeniously facilitated the establishment of a framework agreement for trade in services without allowing the bitter conflict over the audiovisual sector to hold up progress.

Only eighteen countries scheduled audiovisual services in the Uruguay Round, despite the further flexibility to inscribe limitations on any commitments. Most in this


group were culturally distant from the United States and many, such as Japan, South Korea, India, Thailand, and Hong Kong, had relatively large or at least midsized markets. Culturally close countries left audiovisuals off their schedules—with just one exception, New Zealand—sheltering policies from legal challenge in the WTO dispute settlement system. The very limited commitments contracted in this sector ensured that audiovisual services would remain a focus of debate and contention, both in the next trade round and in other negotiating forums, as chapter 8 recounts.

**Culture and Trade Rules**

Filmed entertainment has incited unending controversy since the first multilateral trade negotiations. As tradable services that can be exchanged in a physical package, movies and television programs do not face the same kinds of border barriers that have often impeded trade in other products. Instead, import controls migrate inside the border to the point of delivery: film distribution, movie exhibition, or television broadcasting.

For this reason, the central trade issue has always been equality for foreign and domestic suppliers in national laws, or national treatment. The failed League Convention of 1927 neglected national treatment, placing film quotas in the interstices of an emerging trade regime. Framers of the ITO Charter, influenced by the protectionism of the 1930s, made sure to include a national treatment clause in the GATT but they added a limited exception for screen quotas at movie theaters. With the advent of television, the GATT could not decide whether national treatment covered trade in television programs as it did cinematograph films. The GATS settled this ambiguity without resolving the deeper conflict: states could opt in to obligations for audiovisual services, or opt out and face pressure to accept these commitments in future negotiations.

Persistent conflict and confusion over trade rules for filmed entertainment reflects political polarization over how to resolve the problem of trade and culture. In every trade round, a coalition of states has insisted that the trade regime specially recognize cultural
objectives in the regulation of entertainment media. As the French said in 1928, films are not typewriters or automobiles; nor are they shoes or lard or other factory goods, as the Czechoslovaks put it in 1947. Television tapes, the British contended in 1961, are not pencils, and broadcast transmission is unlike voice telephony or electronic mail, the EC pointed out in 1989, even if it traveled the same technological infrastructure. Still, no multilateral trade agreement exempts filmed entertainment in any form, or singles out cultural objectives as an exception to trade rules. Compromise in both the GATT and the GATS placed movies and then later television and other audiovisual media firmly within the trade regime’s competence but left considerable room for states to manage imports. Even without a cultural exception, filmed entertainment remains a prominent exception to the general liberalizing trend of the GATT-WTO system.

Seven decades of trade negotiations reveal remarkable stability in the political alignments in trade-culture standoffs. The United States has consistently refused explicit recognition of culture in trade rules. Its principal foes have been other English-speaking nations and countries in Western Europe. Anomalies can be found, to be sure: Britain did not join in defense of film quotas in the League of Nations; Australia and Canada took no position on films in the GATT-ITO negotiations; New Zealand even scheduled audiovisual services in the GATS. But the wider universe of cases repeatedly bears out the book’s central points. Time and again, countries culturally close to the United States have been more protective of the right to regulate filmed entertainment than culturally distant countries, and within this group the states with the largest markets have pushed the hardest for trade rules to accommodate culture. Representatives of smaller countries, especially from culturally distant areas in Asia, the Middle East, or Africa, have rarely advanced the same sorts of cultural claims.

This investigation of multilateral trade negotiations lays groundwork for a closer look at domestic politics. Bargaining at a global level sketches the broad outlines of national positions on filmed entertainment in the trade regime, but it does not expose the
internal politics of these choices. Where quotas on foreign entertainment have originated, how they were adopted, and why some eventually disappeared is the subject of the next two chapters.
### Table 5.1. National Positions on Films in the League Convention

<table>
<thead>
<tr>
<th>Cultural Proximity</th>
<th>Market Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>English language</td>
<td>Britain</td>
</tr>
<tr>
<td>Other Germanic languages</td>
<td>Germany</td>
</tr>
<tr>
<td>Culturally close Sweden, <strong>Austria</strong>, Switzerland, Belgium</td>
<td></td>
</tr>
<tr>
<td>Netherlands, Denmark, Norway, Luxembourg</td>
<td></td>
</tr>
<tr>
<td>Romance languages</td>
<td>France, Italy</td>
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<tr>
<td>Chile, Portugal</td>
<td></td>
</tr>
<tr>
<td>Other Indo-European languages</td>
<td></td>
</tr>
<tr>
<td>Czechoslovakia, Poland, Romania, Yugoslavia, Latvia, Bulgaria, Estonia</td>
<td></td>
</tr>
<tr>
<td>Non-Indo-European languages</td>
<td></td>
</tr>
<tr>
<td>Hungary, Finland, Turkey, Japan</td>
<td></td>
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<tr>
<td>Egypt, Thailand</td>
<td></td>
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<tr>
<td>Other Indo-European languages</td>
<td></td>
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<tr>
<td>Czechoslovakia, Poland, Romania, Yugoslavia, Latvia, Bulgaria, Estonia</td>
<td></td>
</tr>
</tbody>
</table>

Note: Countries that reserved their rights to regulate films are shown in boldface. Large, culturally close countries are boxed.
### Table 5.2. National Positions on Films in the ITO Charter

<table>
<thead>
<tr>
<th>Cultural Proximity</th>
<th>Market Size</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Small</strong></td>
<td><strong>Medium</strong></td>
</tr>
<tr>
<td>English language</td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td>Canada, Australia</td>
</tr>
</tbody>
</table>

↑

**Other Germanic languages**
Belgium, Sweden, **Netherlands**, Denmark, **Norway**

**Romance languages**
Mexico, Argentina, Brazil, Cuba, Chile, Venezuela, Colombia, Peru, Uruguay, Ecuador

↓

**Other Indo-European languages**
**Czechoslovakia**, India, Poland, Greece, Pakistan, Iran, Afghanistan

**Non-Indo-European languages**
China, South Africa, Turkey, Burma, Egypt, Ceylon, Syria, Lebanon, Southern Rhodesia

Note: Countries that favored special exceptions for films in the ITO Charter are shown in boldface. Large, culturally close countries are boxed.
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