REPORT

A review of tariff barriers and trade costs affecting the Creating Industries across European borders

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CONTENT

1. Introduction

The aim of this paper is to review the first part of the trade environment for cultural goods and services and to outline the potential barriers. It is followed by a paper on the incentives (which are more numerous and varied at the local and regional levels i.e. NUTS 2 and 3) that are offered to the activities of the cultural economy in the EU. Finally, in this series of papers we review the organisational forms of the industries that comprise the cultural economy in Europe. Overall, these papers provide a backdrop and a wider context for the local level analysis of individual creative industry production chains. In particular the CICERONE project seeks to examine the complex picture of trans-local co-production and understand the locations (institutional and spatial) where value is added. It is a working hypothesis that this activity escapes the scope of existing policy frameworks, and supersedes the (local) conception of many policy makers and politicians.

It is self-evident that cultural production chains have the potential to operate across national borders. Hence, a review of the barriers and incentives, as well as the organisational means that are adopted to navigate them by firms, networks and organisations. This information aims to complement and inform the discussion of the actual and potential policy responses to the emergent creative economy in Europe.

A parallel aim of this paper is to highlight that the creative economy is different to the rest of the economy. Elsewhere we make the case to the unique organisational forms, incentives, and responses of the creative economy, and particular industries. However, our main point here is to illustrate that the trade and regulatory environment has a particular relationship to cultural goods and services; one that is different to other goods and services. This point applies not only to world trade, but also for intra-EU trade. This is despite the fact that the EU is a trade block with apparently no internal tariff barriers: as we will show, it is a nuanced situation.

The paper is not intended to be a legal commentary or critique of Trade Policy, nor an exhaustive description of every measure. Both of these types of text can be found elsewhere (Van den Bossche 2007; Francioni 2012; Narlikar 2012; Pauwels and Loisen 2003). Our aim here is to focus on understanding the institutional framework and its core assumptions, capacities and capabilities, and how they impact the production, distribution and consumption, and archiving of cultural goods and services both within and outside of the EU. Specifically, we seek to understand how the trade rules based on nation states as sovereign bodies (and inter alia industrial policies based upon individual firms) interacts with and affects the operation of both trans-national and trans-EU cultural production constituted by chains and networks.

In sum, the tentative hypothesis that we seek to test over this series of papers (and supplemented by the findings of the original primary research from other Work Packages, (notably WP2) is whether, and to what extent, the existing European, and National and Regional policy frameworks concerning the cultural industries (and the wider economy) are appropriate to the challenges of the new and emergent organisational and governance forms of the creative economy.

2. Outline of the basic structure for world trade regulation

The foundational governance of world trade is the General Agreement on Tariffs and Trades (GATT). The GATT works at the level of the nation state, not the firm; and concerns itself with trade, the reduction of barriers to trade, and the creation of reciprocal trade relationships between nation states. The structure of world trade in goods and services has its roots in the post-second world war planned tri-partite institutional architecture of the World Bank, the International Monetary Fund, and the International Trade Organisation (ITO). The latter, the ITO, never came into being; however, the notion of a multilateral commercial treaty on tariff reduction was developed in 1945: GATT. The GATT was meant to be a temporary and transitional arrangement; however, it has survived with some modifications until the present day through the World Trade Organisation (WTO)(Narlikar 2012).

A cornerstone of the GATT and WTO is the notion of 'Most Favoured Nation' (MFN). All nations must be granted the same tariff status as the MFN. The idea being that incrementally all nations would reduce discrimination against others, and subsequently tend to the same, or no, tariffs. Second, and more controversially, the Principle Supplier Principle (PSP) in effect locked out many developing nations in particular in relation to both agricultural products and textiles. The protectionism that this, in effect, represented was crystalized in a number of agreements, such as the EU Common Agricultural Policy and the international Multi-Fibre Arrangement (MFA 1974-94, and the subsequent Agreement on Textiles and Clothing, ATC 1994-2004). Latterly, UNCTAD has taken on the role of highlighting the relationship of trade and development, and to make the case for more equitable North-South trade relations.

The GATT and WTO have a very loose and basic administrational structure and has developed over time though a number of 'rounds' of negotiations. The most recent the Doha round has yet to conclude (2001-), one at which has been proposed that developing countries be at the centre of debates. Significant developments began with the Tokyo round (1973-79) where more than 100 countries were involved for the first time; the Uruguay round (1986-94) also increased membership, and significantly, led to rules on services (General Agreement of Trade in Services), intellectual property (Trade related intellectual property rights), and developing countries were promised concessions on textiles and agriculture, and industrial goods. Finally, the World Trade Organisation was created (1995).

2.1 The position of culture

In principle trade should neither discriminate in terms of product or service, or origin. However, there is a (far from simple, or singular) long-standing argument that 'culture' is special. In the initial GATT this state of affairs was articulated by culture and heritage being considered as associated with national identities, symbols and actions. In this way the notion of culture and heritage could be argued to be excluded from the scope of the GATT in practice. This interpretation of culture is explicitly referred to in Article XX of the GATT; with the majority of 'allowable exceptions' (to normal trade rules) to be found under subsection (f) which relates to 'national treasures of artistic value'(Acheson and Maule 2006; Van den Bossche 2007; Disdier et al. 2010; Yair, Press, and Tomes 2001).

This position runs up against two immediate and contentious issues: how to balance cultural and trade policies? this implies joining trade agreements while protecting national culture for its non-commercial value. The UNESCO Convention seeks to strike the balance even if it clearly mentions in its article 20 that 'parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties.'. To illustrate the latter point we can highlight (amongst many other example) the case of the disputed Elgin/Parthenon marbles; whose heritage, and what ownership claims can be made, are complex (and contradictory). In terms of a definition of culture there is some description of particular activities and goods, but they are not precise, moreover, they are subject to technological transformation (hence a 'new product category' not being included in extant definitions) and definitions are open to cultural (re-) interpretation.

UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* was developed to provide a counterweight to the prominence of the non-discrimination principle in the WTO dispute settlements. Ratified by over 140 countries, the Convention enshrines that 'cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value' And establishes that 'states have […] the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.'

As we will note, the operational definitions of cultural goods and services are commonly related not to an objective definition (such as UNESCO's (2014) Framework for Cultural Statistics), but instead are defined in relation to disputes about particular cultural industries.

2.2 EU approach to trade and culture

The EU has a particular history with its cultural sector (see WP1), considering its socio-cultural and the political contribution beyond their commercial values. Almost exclusively 'high art and culture'[1] has been promoted via a patrimonial system which is evaluated by experts, from a conservative point of view. National and regional governments have supported and sustained museums, libraries, theatres and orchestras, and more generally the fine and plastic arts. It might be argued that this form of public support of (high) culture is co-terminus with Europe and European Identity, making it subject to section XX of GATT[2].

[1] The notion of 'High art and culture' refers to the European 'classical' tradition that was promoted and encapsulated in European state national policies from the late 19th and much of the 20th Century. 'Low culture' was understood as popular culture, and given less value, and seldom supported by the state. What we would now call the 'mainstreaming' of popular culture in the 1960s set up a tension of governance between the two forms. The tension was exaggerated as much popular culture was commercial and did not require state funding to survive in the market place. The tension between commercial and aesthetic values is a long running fissure in debates about the Creative Economy, dating from Adorno who first defined the 'Culture Industry' (which he conceived of as the 'enemy' of culture).

[2] Culture has always been a central notion to the EU since its formation. Internal cultural policies have been devolved to nation states until very recently, indicating a distaste – post war – of singular region wide policies. However, since 2007 the Commission has gained a 'cultural competence' which has been reinforced and developed in the 2018 'work plan for culture' which seeks to promote "(1) sustainability in cultural heritage; (2) cohesion and well-being; (3) an ecosystem supporting artists, cultural and creative professionals and European content; (4) gender equality; and (5) international cultural relations".

The EU has shifted its approach to trade and cultural policy, largely due to its embrace of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Richieri Hanania, 2019). Unlike Canada which has long focused on cultural industries at large, and adopting a similar position to France, the EU has put the emphasis on the audiovisual industries, primarily television and film (Goff, 2019).

The audio-visual sector also bears the same historical legacy, and this is where the interpretation of Section XX is placed in interpretative tensions (vide the 'cultural exception', below). Broadcasting and transmission were historically, exclusively, and then later dominantly, public owned and state controlled. The historical emergence of commercial and independent broadcasting in parallel to a state controlled and supported system, and especially the technological changes associated with digitisation that effectively led to the lowering of the barriers of entry to distribution systems (which had previously been vulnerable to mono- or oligopoly control). Thus technological changes have disrupted what was the traditional European ecology of funding, and governance, of culture.

The EU is of course implicitly fighting back against the huge economic power of the American cultural industries. An argument has been made that the support for EU originated content is necessary to maintain a broader cultural diversity (and to sustain those cultural traditions). Multiple quota systems have been used by both Americans and Europeans since the dawn of film making. The latest iteration from a European perspective is the Audiovisual Media Services Directive (2010 and revised in 2018). The Directive (and its predecessor versions 'Television without Frontiers') set out minimal requirements for European broadcasters and then video on-demand platforms to disseminate European content. However, we can also see closely related – Trade-Related Aspects of Intellectual Property Rights (TRIPS)- issues associated with copyright and geographical designation that seek to protect European identities.

Formerly, nation states exerted absolute quotas and barriers to entry via control of air time and access (as well as censorship); in effect, a similar policy can be found in other cultural spheres too. The recent rise of independent producers and the decline of state monopolies (in audio-visual in particular), and the weakening of commercial monopolies has created a more market orientated system, but it is a system which still seeks to control content. A new threat is emerging in the form of media 'platform' providers by all US controlled firms (Amazon, Google, Facebook, and Apple: GAFA) who in effect monopolise – once again – the means of distribution, albeit with a diverse (and to a large extent unregulated) content production ecosystem. Complex and new alliances and structures are currently being born. These are two different models. First, Netflix has had a disruptive effect through a vertical concentration process, giving rise to a particular impact on production. Second, the GAFAs are rather monopolistic in a horizontal way controlling all services associated to their respective platforms. It is the objective of this overall project to understand the nature and scale of some of these challenges, and calibrate responses to them. This is a complex issue as the issue of these new 'media' giants challenges many areas of EU policy making (such as taxation, data protection and copyrights[3]). This is a fast changing and complex sphere of activity that is a challenge both for analysts to understand and track the (cross-industry and cross-sectoral, and trans-regional) implications, and for the (relatively slow moving) regulatory and policy environment.

[3] Spring 2019 EU parliament decided on new legislation relating to right holders and publication on the net in line with the "digital single market", see: http://www.europarl.europa.eu/legislative-train/theme-connected-digital-single-market/file-jd-directive-on-copyright-in-the-digital-single-market (last visited 11 September 2019).

2.3 From television without frontiers to audiovisual media services

Audio visual and broadcasting have always been sensitive topics for regulators. Particularly in the case of news and factual content, questions of political and economic influence have led regulators in many countries to interpret the national identity and cultural expression via rules both on monopolies, and on foreign ownership: both of which are considered a potential threat not only to cultural identity, but democracy itself (Pauwels and Loisen 2003). At the EU level the 'Television Without Frontiers' Convention (1989), and the later Audiovisual Media Services (AVMS) Directive (2002), created a form of quota system where 10% of national transmission time, or programme budget resource, should be expended on European 'works'; moreover, from EU independent producers. There have also been quotas for Video on Demand (VOD) operators introduced in AVMS II: this is a rapidly changing field. Furthermore, that the public should have access on free to air broadcasting on events of 'major importance'. Television without Frontiers seeks to harmonize practices within Europe (the EU and the Council of Europe), and provide a common framework for inward investors.

There are, as usual, many grey areas; such as, what events iareof major importance, and to whom? Individual countries have drawn up lists of what they regard as a 'protected list' of major political, sporting and cultural events that relate to national identity. Second, Article 2 of the AVMS Directive[4] makes a clarification on locations: it defines the headquarters of a broadcaster to be the country in which such programming decisions are made; and broadcasters only subject to a single country of origin rule. So much seems logical and to flow from the principle of Article XX of GATT. However, this field represents the 'bleeding edge' of cultural, technological and economic innovation.

Consequentially, in practice, the definition of what is a European (or EU nation state) subject, or topic, of a film, or tv programme, or music is potentially open to debate; as is an alternative means of calculation: whether the music, film or programme was 'made' in the EU. As we know, the making of audio-visual content includes multiple location shoots, use of various sound stages, and post-production facilities arranged in complex production networks that may span the globe. In essence this is no different to other industries that have extensive production chains such as the car industry. The complex pattern of cultural production is exacerbated by the numerous incentives offered by, for example, in film, by screen commissions whose job it is to attract film production to a locality (see following paper)[5]. The emergent trans-local production of the creative industries potentially challenges the mainly national (or even EU) foundation of policy and regulatory action. An objective of the wider project will be to explore the nature of these incentives and their relationship to producers, and their 'location' which is – in practice- a complex mix of a variety of local producers (co-productions), and global production. Resolving a definitive, singular or multiple, locational benefit is far from simple.

2.4 Similar goods and services, and copyright

A further complexity in the field of culture cuts to the core of any WTO agreement: the ontological 'similarity' of a good or service (Van den Bossche 2007; Narlikar 2012). It is this notion, that the same tariff, or no tariff,

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010L0013-20181218

[5] Again, if we look close enough at the Car industry we can see a variety of 'incentives': these are often informal, or 'parallel'.

should be applied to similar goods. Again, we can note legal ambiguity in case law regarding the case of books, for example: where a translation can be argued to be a 'different' not a 'similar' good, and hence it can be treated differently. This category of problem has been manifest in the changing of VAT on goods (which lies out with trade policy), and the imposition of import taxes. Again, this is an example of how the 'sprit' of the regulation is exercised by supportive 'non-trade' policy[6].

Until recently national states in the EU applied different VAT rates for books, periodicals, newspapers and CD-ROM /online. Harmonisation has taken place, and significantly sought to resolve a new problem generated by online retailers. Formerly VAT was collected at the point of consumption; now it will be charged in the country of origin and any transfers made at a national level. The issue with e-books has been to separate them from 'electronic services 'general software and VAT levels have been aligned now with those of paper books (implemented in 2018)

Legislating on 'similarity' or otherwise of products concerns the competing definitions of culture provided by the WTO and those which the EU and nation states define as cultural. This is manifest most clearly in the discussion of Tax incentives (following paper). Again, this is a complex field that can only be understood and interpreted at a local level, and across a particular (creative) industry production chain: an objective of this project.

The inclusion of copyrights, trademarks and patents obviously has significant consequences for the cultural sector. However, this is also a complex field that even through the auspices of WIPO has a number of ongoing disputes about the length of copyright protection for an author's works (which their lifetime). Different nations have battled with various attempts to revise such a figure (the key case was the Sonny Bono law (1998) in the US that sought to extend this to lifetime plus 70 years) in the case of music[7], subsequent changes are also debated in Europe (Copyright Duration Directive 1993/2006); there are parallel discussion concerning publishing to take the protection to 70 years beyond the author's life[8].

A significant challenge to the operation of a TRIPS system is the lack of institutional capacities of various 'collecting agencies' to record, recognise, collect and redistribute earnings. These earnings derive from 'reproduction rights' a rental on the limited use of (commonly) audio-visual materials. This state of affairs means that copyright is only partially effective in much of the world; and rights are not protected. Nation states have also intervened by taxing copyright. States have policies of mandatory collection of reproduction rights and withholding a variable percentage (as much as 25%) which is reinvested in the industry nationally. A further use of taxation is the levy on admission ticket sales (such as in French cinema) again money that is directed into film production. Both cases illustrate how what is a taxation, tariff or barrier for one group, is in fact a form of state aid and incentive for others.

[6] A significant change introduced here affects on-line retailing. Previously VAT was based on the location of the producer, this has been shifted to that of the location of the consumer. The most recent iteration of this has been to enable on-line book sales in some regions where it was uncertain or unclear previously. Regulation (EU) No 1042/2013, EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services (2015). See also Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (2017)

[7] In the US case this was the belated accession to the Berne (1886) convention on the 'moral rights of authors' in 1989, that enabled the 50 year + life.

[8] The Sonny Bono law initially was disparagingly called the 'Mikey Mouse law'; however, this reveals that the major concern was of copyright holders of rights in popular cultural content which were reaching their expiry date and about to enter the public domain. Without such changes the 'back catalogue' of may media companies would be worthless.

2.5 Cultural exceptions

The other intra-intellectual property rights dispute concerns the right of the author to identify their 'work' (the moral rights). This provision is supported by most countries, with the notable exception of the US. There are further complexities of how trading in rights takes place (although this is technically not a tax): the classic example being of the '*Droit de suite'* which seeks to maintain an 'interest' in the contemporary/fine art 'work' even when sold on (the norm in the AV sector, but exceptionally applied in France to Contemporary Art sales). (viz. Resale Rights Directive 2006).

The most significant way in which the exceptional nature of culture has been recognised is through attempts of a French and Canadian sponsored initiative in the Uruguay GATT round to remove culture from GATT. However, this failed to gain general agreement; but, as we have noted, the provisions in Article XX have been used to produce the similar outcomes (see below). Moreover, as will be noted in a subsequent paper the EU's General Block Exemption Regulation (GEBR) (2014) allows (under section 11) aid for culture and heritage and the audio-visual sector (a tax incentive, not a tariff)[9].

A simpler exception that is clearly within the remit of Article XX concerns the licensing of trade in antique and archaeological goods and artefacts. This licencing clearly affects museums and allows countries to block a sale abroad. On a day to day basis it introduces a much logistical complexity in what has since the late 1970s been a trend in the museum world: the block buster exhibition. The curation of such collections requires complex licensing and insurance arrangements even although they are only temporary movements and effectively a 'loan'.

A new phenomenon, that impacts on the contemporary art world, is that of 'Freeports'. A number of nation states have allowed a mezzanine tax status for cultural goods held in a Freeport that does not require the passage through customs, and hence are not subject to local taxation. Again, such innovations make the tracing of flows of cultural goods and services, let alone the finance behind them, more complex.

2.6 Geographical designations/trademarks

Although not strictly a trade tariff, Geographical Indications (GI) are a 'control' on the circulation of rights under TRIPS. A sub-class of intellectual property rights concerns trade marks (the others are copyright and patents). A particular category of trade mark or identification is that of GI. The adoption of such marks has been particularly common in the field of food; perhaps the best know are wine designations, although the label has been applied to many foodstuffs.

GI not only differentiates between a category of product (two wines) that can have different protection, or tariffs, associated with them. The restriction is that a particular name, 'Champagne', can only be used for a compliant product, which is sourced from a specific region. Although it exists under a different code, the effect is parallel to Article XX of GATT that protects a specific cultural identity of a nation. There is a reciprocal

[9] The current TTIP negations have discussed the inclusion/exclusion of the Audio- visual sector. This shows that the whole issue continues to be 'live'.

relationship between the GI of a food product, and the elevation and recognition of the region itself. Technically, this recognition is the particular heritage and social identity of the people and the region; however, a concomitant effect is for place-marketing and tourism[10]. Clearly, such designations have particular relevance for heritage and crafts industry activities. GI issues are explored in a following CICERONE-paper (D3.2) focusing on incentives that is due in March 2020.

3. Measuring and tracing cultural trade

A final problem that concerns trade agreements is the availability of reliable measurements of trans-national trade. The system was developed on the basis of conventional manufactured goods, and commodities. This data is available and regularly reported. However, it comes with a significant limitation as it was conceived of as that derived from import taxes and duties, of which records were already made. However, these were recorded by weight, not value. Cultural goods and services are not well served by such a measure (vide. paintings or CDs or Videos). This problem divides by the traditional state supported creative sector, and the commercial sector. In the former data is available on funding of culture, less readily on the complex dimension of the production and consumption of culture. Albeit, in recent years as audience figures, or consumption data has been used for state evaluation of cultural spending: in this sense it has become more readily available. In the second sense, commercial culture, the data on most aspects of the production chain are commercially sensitive, or of commercial value and are, when available, held behind very high paywalls.

A notable intervention has been the reporting by UNCTAD on trade and development issues relating to the creative economy (2010, 2013). For the first time data was collated to show the international scale and extent of cultural trade. The data, whilst for focused on the creative economy, still retain the deficiency of the raw data sources: namely reporting material goods, and under-reporting, or missing altogether, immaterial cultural goods and services.

Of course, with digitisation (or weightless goods) this data problem has been exacerbated. The main value in cultural goods is seldom in the raw material, but the ideas symbolised or represented; or, the cultural value added by design or styling to an otherwise undifferentiated or generic, economic product. This brings culture into the same realm of difficultly for the researcher as, what is generally termed, invisible trade which is notoriously poorly documented. Flows of currency have been historically well documented; however, the flow of property rights and other earnings is almost entirely unrecorded in a publicly accessible from.

The shift of international trade to online and digital presents huge problems to anyone to track value across time and space; this is something that the new platform industries (Google, Amazon, Facebook, etc) have been able to exploit. This has allowed them to adopt practices, already well-developed in financial services, and Trans-National Corporations more generally; namely by 'off-shoring' their financial trading, and other profitable activities, in tax havens to avoid taxation. The simplest manifestation of this is to legally register the HQ, or accounts department in a tax haven, something which not only subverts national taxation systems, but also impacts of the accuracy of trade data. Similar tactics may be used to access competing

[10] A recent initiative has been to develop a 'European Heritage' GI; presumably a harmonized EU approach with reference to evolving TRIPS developments.

trade zones: for example, Japanese and American car makers have long used such strategies to access EU markets; likewise, Apple has its European HQ in Ireland.

4. Conclusion

The aim of this paper, has been to explore the institutional environment of cultural production networks. We have defined this environment as comprising international trade regulations, state policies (primarily of selective cultural or industrial support), as well as the organisational forms of the industries in question. The latter we conceive of as co-evolving with the cultural and economic objectives, and the regulatory environment. We differentiate the emphasis of this paper from other studies in that our concern is to understand the trans-local cultural industries networks (not individual firms, locations or states) and their interaction with the institutional framework. Rather than tariffs, policies or incentives; or a particular place, we are concerned with the impact on the network (and place/s). It is for this reason that we have identified the framework on international trade as a starting point; and, in this first paper we focus on the tariffs and barriers to trade. Our eventual aim is to review and evaluate this system as it works for the creative industries sector operating in the EU[11].

We showed that there is an evolving institutional structure of trade rules and regulations, with an entropic trajectory to no tariff barriers, and reciprocal (preferably no) incentives. The system is still evolving, especially in the field of services. As much of European trade is in services, and a substantial of the creative sector can be classified as services this is an issue. Moreover, as we have seen the cultural sector sits uncomfortably in the existing trade regulations; much of it being argued to fall under Article XX regarding 'national treasures and identities'. The following paper on incentives will detail the extensive support that European states (differentially) offer the cultural sector.

In this paper we showed that there were in fact few trade barriers to the creative sector outside the EU, and inside the EU. Two initiatives, AVMS and the changes in VAT , especially on e-books have advanced the 'harmonization' within the EU. However, these initiatives still protect both quota system to protect EU cultural production (implemented at the nation state level, in different ways). Digitization and the transformation of the means of distribution and exchange remain challenges. On one hand, the means of distribution are challenged by neo-oligopolies platforms of Amazon, Google, Facebook, Apple and Spotify. Added to this is the fact that all but one of these platforms is US dominated. On the other hand, the earnings from sales can be potentially redirected out of the EU. A further dimension of the latter point concerns intellectual property rights: especially copyright, and GIs. These IP rights are covered in the TRIPS agreement, but the ongoing debates at system level has the potential of unexpected impacts at both the network and individual level.

A related point concerning definitions revealed that there was a grey area with many cultural goods as to what constituted 'similarity'. Again, there was legal scope for argument and effectively the application of tariffs. More generally, as will be discussed in the following paper, there is a way in which various forms of aid and subsidy which are allowed under the various trade agreements are used to offset (mainly) US domination is the audio-visual field. Clearly, tariffs and subsidies are two sides of the same. To stretch an analogy actually it's a 3-sided coin with organisation being the final dimension. The US has used first-mover advantage to attain

[11] As these are trans-local networks we have to consider links out with the EU as well.

oligopolistic control of some markets thereby countering potential effects of trade rules (this is akin to imposing a level playing field solution on an already unequal pattern of trade). Again, this highlights the strength of our approach seeking to look at the total institutional environment.

A point arising from this paper is that the range of stakeholders potentially involved in such trade agreements is large, but not exhausted by the formal trade negotiations. Furthermore, culture's 'weak' institutional position in policy making, and trade and industrial policy in particular, makes it vulnerable to the law of unintended consequences. Hence, in its small way, the contribution of this work package, and the CICERONE project as a whole. Moreover, we have also highlighted that the ways in which many of the extant legislation and agreements 'play out' in a complex landscape of cultural co-production that maybe located in several regions or nations is not one that can be simple evaluated at an institutional level, nor (as has previously been the focus) at the level of a particular spatial unit. Trans-local networks of cultural producers challenge these previous logics of impact evaluation. As such, CICERONE seeks to explore them in from such a perspective.

A significant barrier to research and understanding the operation and impact of trade institutions is the lack of information. Historically data has been captured on weight or value of goods at the port of entry to a country. Little systematic information is publicly collected on the flow of services (goods, or services); and even less on the cultural sector. That data which is collected is by commercial operations, and is either behind a paywall, or confidential.

An interim conclusion is that the cultural sector 'falls between' the cracks of trade policy. Inventive and negotiated legal positions have been evolved under Article XX, but these are developed on the basis of case law, not a universal definition or agreement. This leaves the cultural sector potentially vulnerable to comprehensive agreements (such as has been discussed under TRIPS), that may adversely affect cultural diversity, or local identities.

Legislation

Specific legislation is referred to in the Footnotes (both EU and GATT/TRIPS)

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