

Dynamics Between Multilateralism and Regionalism in Relation to Trade Liberalization and Culture

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Abstract

This paper revisits the conflict of trade liberalization and culture, both of which are basic values or interests, from the viewpoint of the relationship between multilateralism and regionalism. By doing so, this paper clarifies the relationship between multilateralism and regionalism, two forces that govern international economic relationships.

For this purpose, this paper analyzes the relationship between trade liberalization and culture as divided into three phases. First, this paper looks at this relationship within the framework of multilateralism as embodied by the General Agreement on Tariffs and Trade (GATT), mainly with respect to the Uruguay Round of negotiations. Second, it examines the relationship of tension between two organizations embodying multilateralism, namely, the World Trade Organization (WTO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Third, this paper looks at the transition from multilateralism to regionalism, which is epitomized by the implementation of the protocol on cultural cooperation by the EU.

As a result of the analysis of these three phases, it becomes clear that between trade liberalization and culture, there is not only a relationship of conflict as exemplified by a shift of regionalism toward multilateralism, the fragmentation of multilateralism, and a shift of multilateralism toward regionalism, but also a dynamic and complementary relationship.

Keywords: WTO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO, regionalism, multilateralism, FTA

JEL Classification: F13, K33

I. Introduction

On 14 November 2018, the Council of the European Union (hereinafter referred to as the “EU”) adopted the revised Audio-Visual Media Services Directive (hereinafter referred to as “AVMSD”), which was published in the Official Journal of the EU on 28 November 2018.¹ This revision covers a variety of issues, including new trade liberalization and regu-

¹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28.11.2018.

lations of on-demand services.² Prior to this revision, AVMSD required TV broadcasters to broadcast at least 50% of European media (“European Works”), but there was no quantitative restriction of on-demand services such as Netflix. While admitting some exceptions,³ the revised AVMSD obliges EU member states to “ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% share of European works in their catalogues and ensure prominence of those works”.⁴ EU member states shall transpose this new rule into their national legislation by 19 September 2020.⁵

The revised AVMSD can be considered an extension of the EU’s recent policy on cultural goods and services. The EU has insisted that cultural goods and services including audio-visual media should not be subject to trade liberalization. At the same time, the EU has been criticized by the US and other countries which seek to liberalize service sectors. Against this critique, the EU has attempted to protect culture from the pressure of free trade with a variety of strategies.

Prior research has already examined the relationship between trade liberalization and culture, including the debate over an audiovisual sector in the Uruguay Round of the General Agreement on Tariffs and Trade (hereinafter referred to as “GATT”), the Convention on the Protection and Promotion of the Diversity of Cultural Expression signed in the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as “UNESCO”) in 2005 (hereinafter referred to as “the UNESCO Convention”),⁶ and the concept of culture in the World Trade Organization (hereinafter referred to as “WTO”). Based on prior research,⁷ this paper reflects on the conflicts between two fundamental values or interests, trade liberalization, and culture, from the perspective of the relationship between multilateralism and regionalism. This reflection will clarify the dynamic between these two driving forces of international economic relations and their impact on trade liberalization and culture.

The terms of multilateralism and culture are used in various ways by different authors and in different fields.⁸ In this paper, multilateralism and regionalism are almost equivalent

² See, e.g., Shimamura (2019); Inoue (2019); Katsarova (2019).

³ Article 13.6 of the revised AVMSD stipulates two exceptions as follows: “The obligation imposed pursuant to paragraph 1 and the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services”.

⁴ The definition of “European Works” is found in Article 1.1(n) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, OJ L 95, 15.4.2010. Article 1.1 (n) of the Directive defines as “European Works” the following; (i) works originating in Member States, (ii) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3, and (iii) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements. For more details, see Inoue (2019) at 76-77.

⁵ Article 13.1 of the revised AVMSD. However, it is still unclear how to implement this Article. See Inoue (2019) at 78.

⁶ The parties to the UNESCO Convention are 148 countries and the EU as of 9 March 2020, while Japan has not ratified it.

⁷ See, e.g., Orita (2006); Kawase (2014a, b, c); Kono (2018); Koderá (2016); Koderá (2017); Sato (2008); Suzuki (2008); Suzuki (2011); Nishiumi (2015); Nishiumi (2016).

⁸ See, e.g., Takita (2003).

to the terms used in the GATT/WTO. They indicate a way of thinking about issues via consultation between member states, which is institutionally ensured by the general ‘Most Favored Nations’ (hereinafter referred to as the “MFN”) principle in the GATT/WTO. On the other hand, regionalism deals with issues among a part of member states based on the logic of geographical proximity. In the context of trade liberalization, multilateralism aims at liberalizing trade between all GATT/WTO member states, while regionalism includes some GATT/WTO member states.⁹

This paper analyzes the relationship between trade liberalization and culture divided into three phases. First, this paper looks at this relationship within the framework of multilateralism as embodied by the GATT, mainly referencing the Uruguay Round of negotiations. Second, it examines the tension between two organizations embodying multilateralism, namely, the WTO and UNESCO. Third, this paper examines the transition from multilateralism to regionalism, which is epitomized by the implementation of the protocol on cultural cooperation by the EU.

II. Debates within Multilateralism

This chapter examines debates about trade liberalization and culture within multilateralism, that is, the GATT. In particular, it analyzes the debate about cultural exceptions during the Uruguay Round negotiations to clarify the position of culture in the context of trade liberalization after World War II.

II-1. Cultural Exception in Multilateralism

It is often said that policy debates about the relationship between trade liberalization and culture first occurred after World War I.¹⁰ A particular problem was encountered with the audiovisual sector represented by films. After the war, European countries began to introduce, import and screen quotas to protect their domestic industries from American Hollywood movies.¹¹

The protectionist measures taken by European countries had a significant impact on free trade after World War II. The GATT was the institutional foundation of trade liberalization. Article 4 “Special Provisions Relating to Cinematograph Films” of the GATT permits the introduction of foreign film screen quotas under certain conditions. There was a debate about whether the exception provided in Article 4 could be applied not only to films, but also other audiovisual media. No conclusion was offered on this point in the GATT.¹²

Thus, films were excluded from the object of trade liberalization under the multilateral

⁹ Mamiya (2019) at 253-254. For the relationship between multilateralism and regionalism, *see also* Trachtman (2007) at 157-160.

¹⁰ Burri (2014) at 480.

¹¹ *See* Kono (2018) at 240; Suami (2003) at 234; Singh (2008) at 122-124.

¹² *See* Kawase (2014a) at 39-45; Kono (2018) at 241.

regime of the GATT. However, the confrontation between the US and European states over the trade liberalization of the audiovisual sector has continued. The peak of the tension was reached during the Uruguay Round of negotiations about “cultural exception”, which defines the cultural industries as outside trade liberalization.

II-2. Cultural Exception in Regionalism

During the late 1980s, debates on the relationship between trade liberalization and culture developed at the intersection of multilateralism and regionalism. In other words, the confrontation over the audiovisual sector became apparent in the transatlantic (European states vs. the US) and North American (Canada vs. the US) regions, in parallel to the multilateral negotiations during the Uruguay round.

In the transatlantic region, the European Economic Community (hereinafter referred to as “EEC”) adopted the “Television Without Frontier” (hereinafter referred to as “TVWF”) Directive in 1989.¹³ This directive required EEC’s member states to ensure that broadcasters reserved a majority proportion of their transmission time for “European works”.¹⁴ The US insisted that this directive violated several principles of the GATT such as MFN, national treatment, and the prohibition of quantitative restrictions. Conversely, EEC refuted the US’s argument by stating that the GATT did not apply to the TV sector because it does not deal with goods, but services. The US requested a consultation under Article 22 of the GATT, which failed to reach a solution.¹⁵

In the North American region, the Canada-US Free Trade Agreement (hereinafter referred to as “CUSFTA”) was signed in 1988. Canada took the initiative to stipulate a cultural exception along with the EU. In CUSFTA, Canada successfully introduced a provision that excluded cultural industries from trade liberalization.¹⁶ Moreover, this provision was included in the North American Free Trade Agreement (hereinafter referred to as “NAFTA”) signed between the United States, Canada, and Mexico in 1992.¹⁷

The confrontation over the audiovisual sector which occurred in these two regions had a significant impact on the multilateralism of the GATT. In particular, by successfully introducing the provision excluding cultural industries from trade liberalization, “the cultural exception proponents attempted to transplant these localized ‘successes’ into the multilateral context”.¹⁸ In other words, the EU and Canada endeavored to “multilateralize”¹⁹ regionalism which entailed the transplantation of cultural exception in CUSFTA and NAFTA into the

¹³ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ L 298, 17.10.1989.

¹⁴ Article 4.1 of the TVWF Directive.

¹⁵ See Suami (2003) at 234-235.

¹⁶ Article 2005.1 of CUSFTA.

¹⁷ Article 2106 of NAFTA and Article 2016 of its Annex. For the discussion about cultural industries and trade liberalization in CUSFTA and NAFTA, see Shi (2013) at 232-243.

¹⁸ Burri (2014) at 481.

¹⁹ The concept of “multilateralization of regionalism” is generally used to describe the phenomenon that the content of regulation of FTAs concluded in bilateral or regional context spreads into multilateral relations. On this, see Sekine (2013) at 100.

multilateral negotiations of the GATT.

II-3. Multilateralization of Regionalism

During the Uruguay Round of negotiations which began in 1986, the trade liberalization of the audiovisual sector was debated during the negotiation of the General Agreement on Trade in Service (hereinafter referred to as “GATS”). On the one hand, the US insisted that the audiovisual sector, like other sectors, should be liberalized. On the other hand, the EU and Canada developed the concept and policy of “cultural exception” and the exemption of the audiovisual sector from trade liberalization because it concerned cultural identity.²⁰ The EU and Canada invoked cultural exception clauses in CUSFTA and NAFTA during the Uruguay Round.²¹

The GATS was adopted during the Uruguay Round as a compromise between the US and EU/Canada. On the one hand, the audiovisual sector was covered by the GATS. Moreover, Article 14 of the GATS which stipulated general exceptions did not refer to cultural justifications. Accordingly, the GATS followed the US argument which attempted to liberalize the audiovisual sector alongside others. However, under the GATS legal structure, WTO member states are permitted to exclude specific sectors from trade liberalization due to certain MFN obligations, including market access and national treatment.²² As a result, the EU was able to exempt the audiovisual sectors from trade liberalization under the GATS.

II-4. Brief Summary

This chapter has reviewed the relationship between trade liberalization and culture within the multilateralism of the GATT. According to the GATT, films were excluded from free trade from the very beginning. During the late 1980s, the trade liberalization of the audiovisual sector became an international issue again due to the EEC’s TVWF Directive. At the time, the EU and Canada attempted to exclude the sector from trade liberalization by invoking the concept of cultural exception.

Cultural exception was a product of the confrontation between the US and the EU during the Uruguay Round. However, as demonstrated in this chapter, cultural exception is rooted in the introduction of cultural exception provisions in CUSFTA and NAFTA. The proponents of cultural exception tried to multilateralize the successful strategy of cultural exception in the context of regionalism to exempt the audiovisual sector from trade liberalization during the Uruguay Round.

²⁰ For the history of GATS negotiations on the audiovisual sector, see, e.g., Miura (1996); Kono (2018) at 243-244; Suami (2003) at 235; Nishiumi (2015) at 17; Singh (2008) at 126-136.

²¹ Singh (2008) at 126.

²² There are two approaches to trade liberalization in services. One is a negative list approach enumerating measures and sectors exempted from liberalization. The other is a positive list approach under which sectors and condition of liberalization is explicitly listed. In the GATS, a negative approach is used with regards to MFN (Article 2.2) and a positive one to market access and national treatment (Article 16.1 and 17.1).

III. Tension and Balance Between Multilateralisms

The relationship between trade liberalization, culture, and the GATT multilateralism materialized into the GATS due to the confrontation between the US and EU/Canada over the audiovisual sector during the Uruguay Round. This relationship evolved into the multilateralism of UNESCO. As a result, the issue of trade liberalization and culture caused tension between two multilateralisms: the WTO and UNESCO.

III-1. *Cultural Diversity in UNESCO*

As shown in Chapter II, the audiovisual sector was excluded from GATS trade liberalization due to a compromise between the proponents and opponents of cultural exception. However, it was expected that cultural goods and services would be subject to future negotiations in the WTO with the main objective of trade liberalization. Thus, the proponents of cultural exceptions such as the EU and Canada attempted to move the discussion from the WTO to another multilateral framework, UNESCO, which is more positive about culture. During the “multilayering” of multilateralism, the EU and Canada transformed cultural exception into a new concept of cultural diversity,²³ and endeavored to adopt a new Convention that could compete with the WTO.²⁴

UNESCO General Conference adopted the Universal Declaration on Cultural Diversity at its twenty-first session on 2 November 2001.²⁵ It is not legally binding but was introduced to demonstrate the moral unity of member states of UNESCO and led to the creation of a new Convention.²⁶ Following the declaration, the drafting of a new Convention was decided at the General Conference during its thirty-second session on 17 October 2003.²⁷ Finally, the UNESCO Convention on Cultural Diversity was adopted by the General Conference on 10 October 2005.

III-2. *Purpose and Nature of the UNESCO Convention*

The UNESCO Convention Article 1, paragraph (h) clearly presents the structure of the Convention. Paragraph (h) stipulates that the objective of the Convention is “to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory”. In other words, the Convention assumes the character of a “counter-hegemonic instrument”²⁸ to counteract WTO free trade obligations and realize national policies

²³ See, e.g., Nishiumi (2015) at 18-20.

²⁴ For the negotiating history of the UNESCO Convention, see, e.g., Voon (2007) at 173-185; Ruiz-Fabri (2010); Kono and Van Uytsel (2012).

²⁵ Universal Declaration on Cultural Diversity, CLT-2002/WS/9, 2 November 2001.

²⁶ Suzuki (2008) at 66-67; Nishiumi (2016) at 205.

²⁷ Desirability of Drawing up an International Standard-Setting Instrument on Cultural Diversity, 32 C/Resolution 34, 17 October 2003.

that protect and promote domestic cultural goods services.

Such a character also can be found in the structure of the Convention itself. As a treaty under international law, the Convention stipulates the rights and obligations of member states. However, what distinguishes the Convention from other treaties is the “imbalance” between rights and obligations.²⁹ On the one hand, the Convention endows wide member states with sovereign rights to protect and promote the diversity of their cultural expression. On the other hand, the obligations it imposes on them are only those to make efforts. The imbalance between rights and obligations reflects the purpose of the Convention, that is, to reaffirm the sovereign rights of States to implement a broad range of national policies protecting cultural goods and services from WTO trade liberalization, rather than impose obligations on them.³⁰

III-3. Tension and Balance Between the Two Multilateralisms

The UNESCO Convention transformed the relationship between trade liberalization and culture due to the multilateralism of the GATT into the two multilateralisms of the WTO and UNESCO. Specifically, the fact that the Convention assumes the character of “counter-hegemonic instrument” against WTO trade liberalization indicated significant tension between the two multilateralisms.

However, the tension between the two multilateralisms has not yet intensified. Rather, a certain equilibrium has been maintained between them. This current situation can be explained partly from the viewpoint of the WTO. As mentioned above, the audiovisual sector was covered by the GATS, but WTO members are not obliged to liberalize it. This led to a temporary “ceasefire”³¹ in the WTO. Article 19 of the GATS stipulates the so-called “built-in agenda” for future negotiations on trade in services that would break the ceasefire. Negotiations on trade in services were resumed in 2000 but have not concluded. As a result, the conflict between obligations under the WTO and UNESCO has not yet become apparent.

From the viewpoint of the UNESCO Convention, some legal devices have been formulated to avoid a conflict of obligations with the WTO. One of them is Article 20 of the Convention. It requires its member states to foster mutual supportiveness between the Convention and other treaties to which they are parties, and to take the relevant provisions of this Convention into account when interpreting and applying other treaties to which they are parties or when entering into other international obligations. It is true that the meaning and significance of Article 20 are ambiguous,³² but this “conflicting clause”³³ may ease the tension between two multilateralisms of the WTO and UNESCO.

²⁸ Raj Isar and Pyykkönen (2015) at 19; Kodera (2017) at 151.

²⁹ Shi (2013) at 112-114; Kodera (2017) at 150.

³⁰ Kodera (2017) at 151.

³¹ Nishiumi (2015) at 18.

³² See, e.g., Suzuki (2008) at 113-129; Kawase (2014b) at 197-203; Stoll (2012); Shi (2013) at 270-278.

III-4. *Brief Summary*

The adoption of the UNESCO Convention in 2005 transformed the relationship between trade liberalization and culture into an issue between the two multilateralisms of the WTO and UNESCO. This multilayering of multilateralism could have intensified the tension between the WTO and UNESCO.

However, due to the stagnation of WTO negotiations on trade in services and the introduction of a conflict clause in the UNESCO Convention, the expected tension has not yet become apparent. Instead, a certain equilibrium seems to have been reached.

IV. **The Shift from Multilateralism to Regionalism**

There appears to be an equilibrium between two multilateralisms of the WTO and UNESCO with regards to trade liberalization and culture. Behind this appearance, however, exists a movement to seek a new point of equilibrium in regionalist terms. This chapter aims at clarifying the dynamics between multilateralism and regionalism by examining the EU's recent tendency in cultural cooperation.

IV-1. *Mainstreaming of Culture in the External Policy of the EU*

On 18 May 2006, the Council of the EU decided the following: "The UNESCO Convention constitutes a relevant and effective pillar for promoting cultural diversity and cultural exchanges, to which both the Community, as reflected in Article 151(4) of the Treaty, and its Member States, attach the greatest importance" (paragraph (3) in the preamble).³⁴

After the adoption of the Convention, the EU changed direction towards a "mainstreaming" strategy which places culture at the center of its external policy.³⁵ On 10 May 2007, the European Commission published its first comprehensive policy document about culture, the Communication on a European Agenda for Culture in a Globalizing World.³⁶ In the Communication, the European Commission referenced the rapid entry into force of the Convention and the new role of cultural diversity at an international level.³⁷ It also confirmed that "as parties, the Community and its Member States have committed themselves to strengthen a new cultural pillar of global governance and sustainable development, notably through enhancing international cooperation". In addition, it proposed the integration of the cultural dimension as a "vital element" of Europe's dealings with partner countries and regions.³⁸

Following the Communication, the UNESCO Convention was actively integrated into

³³ For the typology of conflict clauses in international law, see International Law Commission (2006) paras. 268-288.

³⁴ Council of the European Union (2006) at 15. See also Souyri-Desrosier (2014) at 210.

³⁵ Loisen (2014) at 510-512.

³⁶ European Commission (2007).

³⁷ *Id.* at 7.

³⁸ *Id.* at 10.

the EU's external and development policies.³⁹ On 20 November 2008, the Council of the EU in its "Conclusions on the Promotion of Cultural Diversity and Intercultural Dialogue in the External Relations of the Union and its Member States"⁴⁰ called on the Member States and the Commission to promote the UNESCO Convention by encouraging its ratification and implementation⁴¹. The promotion and implementation of the UNESCO Convention were also included in the Work Plan for Culture 2008-2010 formulated by the Council of the EU.⁴² The UNESCO Convention has been referenced continuously by the Work Plan 2011-2014, 2015-2018, and 2019-2022.⁴³

IV-2. Protocol on Cultural Cooperation

The integration of the UNESCO Convention and culture into the EU's external policy, and the mainstreaming of culture in its trade policy, became apparent in the context of regionalism. The EU developed an "innovative approach"⁴⁴ to deal with culture in FTAs by using the Protocol on Cultural Cooperation (hereinafter referred to as "PCC").⁴⁵ EU annexes PCCs to FTAs it signs concerned with culture, such as the audiovisual sector, on a bilateral and regional basis. Until now, the EU annexed PCCs to the EPA with CARIFORUM,⁴⁶ the FTA with South Korea, and the Association Agreement with Central American countries.⁴⁷

The EU introduced the PCC when it signed the EPA with CARIFORUM in October 2008.⁴⁸ The EU-CARIFORUM EPA was annexed with Protocol III on cultural cooperation.⁴⁹ The preamble of the Protocol noted that the EU and CARIFORUM States intended to "effectively implement the UNESCO Convention and to cooperate within the framework of its implementation" and recognized "the importance of the cultural industries and the multi-faceted nature of cultural goods and services as activities of cultural, economic and social value". The purpose of the Protocol is to "set [s] up the framework within which the Parties shall cooperate for facilitating exchanges of cultural activities, goods, and services, including *inter alia*, in the audiovisual sector" (Article 1.1). The Protocol included a preamble and nine Articles that stipulate, for example, that co-produced audiovisual works shall

³⁹ See Loisen (2014) at 510-512; Psychogiopoulou (2012) at 390-395; Souyri-Desrosier (2014) at 211-213.

⁴⁰ Council of the European Union (2008b).

⁴¹ *Id.* at 10.

⁴² Council of the European Union (2008a).

⁴³ Council of the European Union (2010); Council of the European Union (2014); Council of the European Union (2018).

⁴⁴ Council of the European Union (2009) at 17.

⁴⁵ For details, see, e.g., Troussard, Paris-Cendrowicz and Guerrier (2012); Psychogiopoulou (2012); Loisen (2014); Souyri-Desrosier (2014); Psychogiopoulou (2015); Garner (2016).

⁴⁶ CARIFORUM is composed of 15 countries among the African, Caribbean and Pacific (ACP) States. The EU-CARIFORUM EPA was signed in October 2008, and it has been provisionally applied since December 2008.

⁴⁷ Central American countries with which the EU signed the Association Agreement are Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. The Association Agreement was signed in June 2012. It entered into force on 1 August 2013 for Honduras, Nicaragua, and Panama. It was provisionally applied for Costa Rica and El Salvador since 1 October 2013 and for Guatemala since 1 December 2013.

⁴⁸ For details, see Garner (2016).

⁴⁹ Protocol III on cultural cooperation to the Economic Partnership Agreement between the CARIFORUM and the European Community and its Member States, available at

https://ec.europa.eu/assets/eac/culture/policy/international-cooperation/documents/cultural-cooperation-protocol_en.pdf.

benefit from preferential market access with EC parties as “European Works” under AVMSD (Article 5.2).⁵⁰

From a multilateralist and regionalist perspective, it is noteworthy that the PCC aims at implementing the UNESCO Convention. When the EU signs PCCs with developing countries such as the CARIFORUM, its purpose is to implement Article 16 and Article 20 of the UNESCO Convention.⁵¹ Article 16 stipulates preferential treatment of artists and others from developing countries, while, as noted above, Article 20 is a conflict clause that regulates the relationship with other treaties. The fact that the PCC purports to implement the Convention is also applied when the EU signs PCCs with developed countries. For example, according to the EU, the PCC annexed to EU-South Korea FTA⁵² aims at implementing Article 12 which concerns cultural cooperation and Article 20.⁵³

What is common to Article 12, Article 16, and Article 20 is the ambiguity of their text and meaning.⁵⁴ Therefore, the EU endeavors to promote the ratification and implementation of the UNESCO Convention by clarifying the meaning of every Article through PCCs.

IV-3. Regionalization of Multilateralism

The EU’s strategy of promoting the implementation of the UNESCO Convention by PCCs annexed to FTAs represents a new dynamic between trade liberalization and culture: the regionalizing of multilateralism.

Behind the regionalizing of multilateralism exists the stagnation of the WTO Doha Round negotiations. At present, new media services such as on-demand services have appeared thanks to innovations in information and communication technology. However, the deadlock of trade negotiations about services has made it difficult to establish new multilateral rules on trade liberalization and culture. As a result, the forum for rule-making is shifting from the WTO to bilateral or regional FTAs. In the beginning, the EU regarded multilateral negotiations as more important than bilateral ones but changed its strategy to utilize multilateral agreements due to the stagnation of the Doha Round negotiations.⁵⁵ It can be said that the EU’s new approach that makes use of PCCs for implementing the UNESCO Convention reflects an overall tendency to shift from multilateralism to regionalism.

⁵⁰ The PCCs that the EU signed with three countries or regions have a common structure composed of three pillars: preamble, horizontal provisions on cultural cooperation in general, and sectoral provisions on cultural cooperation on specific sectors. *See* Psychogiopoulou (2015) at 233-241.

⁵¹ European Commission (2009) at 17. *See also* Loisen (2014) at 513.

⁵² Protocol on cultural cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, available at

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:127:FULL&from=EN>. The PCC annexed to the EU-South Korea FTA provoked severe criticism due to highly developed cultural industries in South Korea. As a result, its structure is different from other PCCs. For example, unlike the PCC with CARIFORUM, it requires reciprocity as a condition to apply preferential treatments to co-produced audiovisual works. For criticism on the PCC annexed to the EU-South Korea FTA, *see* European Commission (2009) at 19; Loisen (2014) at 515-520; Souyri-Desrosier (2014) at 215-216.

⁵³ European Commission (2009) at 19. *See also* Loisen (2014) at 514.

⁵⁴ *See, e.g.*, Kodera (2016); Kodera (2017).

⁵⁵ *See* Sekine (2013) at 102-103.

As a result of this shift, the EU encourages the ratification and implementation of the UNESCO Convention by concluding PCCs with other countries. The EU strives to ensure that others become proponents of the UNESCO Convention to oppose the US's strategy of audiovisual sector trade liberalization using FTAs.⁵⁶ The EU's new approach represents the "regionalizing" of multilateralism in the sense that it endeavors to realize the multilateralism of the UNESCO Convention in the context of regionalism.

IV-4. Brief Summary

It appears that an equilibrium has been reached between the two multilateralisms of the WTO and UNESCO that balances trade liberalization and culture. However, behind the apparent equilibrium, the EU's new approach aims to realize the UNESCO convention through FTAs and PCCs. The EU has made efforts to protect and promote cultural goods and services by combining multilateralism and regionalism properly. The EU's approach indicates that the different dynamics of multilateralism and regionalism in international economic relations are not always contradictory, but can be complementary in some cases.

V. Conclusion

This paper analyzed the interaction between the two dynamics of multilateralism and regionalism by focusing on the relationship between trade liberalization and culture. The forum for dealing with this issue has shifted from the multilateralism of the GATT to the two multilateralisms of the WTO and UNESCO, and regionalism using FTAs.

However, the process of transition has been non-linear. As demonstrated in this paper, the proponents of cultural exceptions such as the EU and Canada have endeavored to transplant their success with CUSFTA and NAFTA into the multilateral context of the GATT Uruguay Round negotiations (the "multilateralizing" of regionalism). Moreover, by shifting the forum from the WTO to UNESCO, they transformed the relationship between trade liberalization and culture into an issue between the two multilateralisms of the WTO and UNESCO (the "multilayering" of multilateralism). Also, the EU has promoted the implementation of the UNESCO Convention through bilateral and regional FTAs and PCCs (the "regionalizing" of multilateralism).

These practices indicate that multilateralism and regionalism are not necessarily anti-nomic, but complementary in some cases. Global economic actors can combine these two driving forces to realize their objectives. In this sense, both multilateralism and regionalism are purposive in nature. It is the purposiveness of multilateralism and regionalism and their complex interaction that generate the dynamics of the global economic order.

⁵⁶ See Loisen (2014) at 516; Souyri-Desrosier (2014) at 212; Richieri Hanania and Ruiz Fabri (2014) at 503.

References

- Burri, M. (2014), "Trade versus Culture: The Policy of Cultural Exception and the WTO", in Donders, K., Pauwels, C. and Loisen, J. (eds), *The Palgrave Handbook of European Media Policy*, Palgrave Macmillan.
- Council of the European Union (2006), Council Decision of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expression, *OJ 2006 515/EC*, 25 July 2006.
- Council of the European Union (2008a), Conclusions of the Council and of the Representatives of the Governments of the Member States, meetings within the Council, on the Work Plan for Culture 2008-2010, *OJ 2008 C 143/06*, 6 October 2008.
- Council of the European Union (2008b), Conclusions of the Council and of the Representatives of the Governments of the Member States, Meeting within the Council, on the Promotion of Cultural Diversity and Intercultural Dialogue in the External Relations of the Union and its Member States, *OJ 2008 C 320/04*, 16 December 2008.
- Council of the European Union (2010), Conclusions of the Council and of the Representatives of the Governments of the Member States, meetings within the Council, on the Work Plan for Culture 2011-2014, *OJ 2010 C 325/01*, 2 December 2010.
- Council of the European Union (2014), Conclusions of the Council and of the Representatives of the Governments of the Member States, meetings within the Council, on the Work Plan for Culture 2015-2018, *OJ 2014 C 463/02*, 23 December 2014.
- Council of the European Union (2018), Conclusions of the Council and of the Representatives of the Governments of the Member States, meetings within the Council, on the Work Plan for Culture 2019-2022, *OJ 2018 C 460/10*, 21 December 2018.
- European Commission (2007), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Agenda for Culture in a Globalizing World, COM (2007) 242 final, 10 May 2007.
- European Commission (2009), Commission Staff Working Document on the External Dimension of Audiovisual Policy, SEC (2009) 1033 final, 14 July 2009.
- Garner, B. (2016), *The Politics of Cultural Development: Trade, cultural policy and the UNESCO Convention on Cultural Diversity*, Routledge.
- Inoue, J. (2019), "Oshurengo niokeru Kontentsu Shisaku no Kosatsu: "Oshusakuhin" no Quota sei no Jokyo oyobi Yojo Bunseki [An evaluation of a measure of the European Union's content policy: State of quota regulation of "European works" and its surplus analysis]," *Journal of Information & Communication Research*, Vol. 36, No. 4, pp. 75-82.
- International Law Commission (2006), Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi, A/CN.4/L.682, 13 April 2006.
- Katsarova, I. (2019), "The Audiovisual Media Services Directive", Briefing European Par-

- liamentary Service, available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583859/EPRS_BRI\(2016\)583859_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583859/EPRS_BRI(2016)583859_EN.pdf).
- Kawase, T. (2014a, b, c), “WTO ni okeru Bunka Tayosei Gainen: Kontentsu Sanpin no Tai-gu oyobi Bunka Tayosei Joyaku tono Kankei o Chushin ni (1)(2)(3) [Concept of Cultural Diversity in the Context of the WTO Agreement: Some Thoughts on the Treatment of Content Items and the Relationship with the UNESCO Convention on Cultural Diversity (1)(2)(3)],” *Sophia Law Review*, Vol. 57, No. 3, pp. 1-45, Vol. 57, No. 4, pp. 171-215, Vol. 58, No. 1, pp. 91-136.
- Kodera, S. (2016), “Bunka Tayosei Joyaku ni okeru Kihan no Tajusei: Tojokoku ni taisuru “Tokkei Taigu” no Shatei to Igi [Plurality of Norms in the UNESCO Convention on Cultural Diversity: the Scope and Significance of Preferential Treatment to Developing Countries],” *The Seinan Law Review*, Vol. 48, No. 3-4, pp. 216-242.
- Kodera, S. (2017), “Bunka Tayosei Joyaku ni okeru Tojokoku eno Tokkei Taigu [Preferential Treatment to Developing Countries in the UNESCO Convention on Cultural Diversity],” in Kitamura, Y. and Nishiumi, M. (eds.), *Bunka Tayosei to Kokusaiho: Jinken to Kaihatsu o Shiten toshite* [Cultural Diversity and International Law: from the perspectives of human rights and development], Chuo University Press.
- Kono, T. (2018), “Bunka Tayosei [Cultural Diversity],” in Kobayashi, M. (ed.), *Bunka Seisaku no Genzai 1: Bunka Seisaku no Shiso* [Cultural Policy Studies No. 1 Concepts] Tokyo University Press.
- Kono, T. and Van Uytsel, S. (2012), “The Convention on the Diversity of Cultural Expressions: Beyond a Trade and Culture Convention”, in Kono, T. and Van Uytsel, S. (eds), *The UNESCO Convention on the Diversity of Cultural Expressions—A Tale of Fragmentation in International Law*, Intersentia.
- Loisen, J. (2014), “Mainstreaming Culture in EU External Relations through Protocols on Cultural Cooperation: Fostering or Faltering Cultural Diversity?”, in Donders, K., Pauwels, C. and Loisen, J. (eds), *The Palgrave Handbook of European Media Policy*, Palgrave Macmillan.
- Mamiya, I. (2019), “Chiki Shugi to WTO Taisei [Regionalism and the WTO regime],” in Nakagawa, J., Shimizu, A., Taira, S. and Mamiya, I., *Kokusai Keizai Ho* [International Economic Law], 3rd ed. Yuhikaku.
- Miura, N. (1996), “GATT Uruguay Round ni okeru AV “Bunka Tokurei” o meguru Kobo [Debates on Audiovisual “Cultural Exception” in the GATT Uruguay Round],” *EC Studies in Japan*, No. 16, pp. 46-72.
- Nishiumi, M. (2015), “Bunka Tayosei to Kokusai Shakai no Genzai [The Current Situation of Cultural Diversity and International Society],” *Horitsu Jiho*, Vol. 87, No. 12, pp. 15-20.
- Nishiumi, M. (2016), “Jizoku Kano na Kaihatsu to Bunka [Sustainable Development and Culture],” in Nishiumi, M., *Gendai Kokusaiho Ronshu: Kaihatsu, Bunka, Jindo* [Essays on Modern International Law: Development, Culture, and Humanity], Chuo University Press.

- Orita, M. (2006), “UNESCO “Bunka Tayosei Joyaku o meguru Hoteki Ronten ni tsuiteno Kosatsu: Fukusu no Joyaku no Tekiyo Chosei o Chushin ni [A Consideration on Legal Issues Relating to the UNESCO Convention on Cultural Diversity: with a Focus on the Coordination of the Application of Multiple Treaties],” *Jurist*, No. 1321, pp. 100-104.
- Psychogiopoulou, E. (2012), “The Convention on the Diversity of Cultural Expressions and the European Union: The Quest for Competence and Implementation”, in Kono, T. and Van Uystel, S. (eds), *The UNESCO Convention on the Diversity of Cultural Expressions—A Tale of Fragmentation in International Law*, Intersentia.
- Psychogiopoulou, E. (2015), “Culture in the EU external economic relations”, in Vadi, V. and de Witte, B. (eds), *Culture and International Economic Law*, Routledge.
- Raj Isar, Y. and Pyykkönen, M. (2015), “Confusing Culture, Polysemous Diversity: “Culture” and “Cultural Diversity” in and after the Convention”, in De Beukelaer, C., Pyykkönen, M. and Singh, J.P. (eds), *Globalization, Culture, and Development: The UNESCO Convention on Cultural Diversity*, Palgrave Macmillan.
- Richieri Hanania, L. and Ruiz Fabri, H. (2014), “European Media Policy and Cultural Diversity at the International Level: The EU’s Role in Fostering the Implementation of the 2005 UNESCO Convention”, in Donders, K., Pauwels, C. and Loisen, J. (eds), *The Palgrave Handbook of European Media Policy*, Palgrave Macmillan.
- Ruiz-Fabri, H. (2010), “En guise d’introduction générale: une petite histoire de la convention de l’UNESCO sur la protection et la promotion de la diversité des expressions culturelles”, in Ruiz-Fabri, H. (ed), *La convention de l’UNESCO sur la protection et la promotion de la diversité des expressions culturelles: premier bilan et défis juridiques*, Société de législation comparée.
- Sato, T. (2008), *Bunka to Kokusaiho* [Culture and International Law], Tamagawa University Press.
- Sekine, T. (2013), “EU no Jiyu Boeki Kyotei (FTA) no Tokucho to Eikyo: Kankyo Kanren Joko o Chushin ni [Features and Impact of EU Free Trade Agreements: A Qualitative Analysis of Environmental Provisions],” *EU Studies in Japan*, No. 33, pp. 99-119.
- Shi, J. (2013), *Free Trade and Cultural Diversity in International Law*, Hart Publishing.
- Shimamura, T. “EU Shichokaku Media Service Shirei (AVMSD) no Kaisei [EU’s Revision of Audiovisual Media Services Directive (AVMSD)],” *Gaikoku no Rippo*, No. 278-2, pp. 12-13.
- Singh, J.P. (2008), *Negotiation and the Global Information Economy*, Cambridge University Press.
- Souyri-Desrosier, C. (2014), “EU protocols on cultural cooperation: An attempt to promote and implement the CDCE within the framework of bilateral trade negotiations”, in Richieri Hanania, R. (ed), *Cultural Diversity in International Law: The effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Routledge, 2014.
- Stoll, P.T. (2012), “Article 20: Relationship to Other Treaties: Mutual Supportiveness, Complementarity and Non-Subordination”, in von Schrolemer, S. and Stoll, P.T. (eds), *The*

UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Springer.

- Suami, T. (2003), “Boeki to Bunka: Shiminteki, Shakaiteki Kachi to Keizaiteki Kachi no Chosei [Trade and Culture: the Coordination between Civic/Social and Economic Values],” in Kotera, A. (ed.), *Tenkanki no WTO: Hiboekiteki Kanshin Jiko no Bunseki* [WTO at the Crossroads: An Analysis of Non-Trade Issue Linkages], Toyo Keizai Shinpo Sha.
- Suzuki, J. (2008), ““Bunkateki Hyogen no Tayosei no Hogo oyobi Sokushin ni kansuru Joyaku (Bunka Tayosei Joyaku)” no Saitaku to Igi [Adoption and Significance of the UNESCO Convention on Cultural Diversity],” *Dokkyo Hogaku*, No. 77, pp. 415-496.
- Suzuki, J. (2011), “UNESCO Bunka Tayosei Joyaku no Hakko to Sono Kadai [The Entry into Force of the UNESCO Convention on Cultural Diversity and its Challenge],” in Hoshino, S. (ed.), *Global Shakai niokeru Seiji, Ho, Keizai, Chiki, Kankyo* [Politics, Law, Economics, Region, and Environment in Global Society], Asia University School Store Book Centre.
- Suzuki, H. (2007), “Bunka to Jiyuboeki: UNESCO Bunka Tayosei Joyaku no Saitaku [Culture and Free Trade: the Adoption of the UNESCO Convention on Cultural Diversity],” in Shiokawa, N. and Nakatani, K. (eds.), *Ho no Saikochiku II: Kokusaika to Ho* [The Reconstruction of Law, Vol. 2, Internationalization and Law], Tokyo University Press.
- Takita, K. (2003), “Takokukan Shugi no Saiteigi to America Gaikou: Kyocho Shugi to Tandoku Shugi no Sokoku [How to Redefine Multilateralism for the Better Understanding of U. S. Foreign Policy],” *International Relations*, No. 133, pp. 11-27.
- Trachtman, J.P. (2007), “International Trade: regionalism”, Guzman, A. T. and Sykes, A. O. (eds), *Research Handbook in International Economic Law*, Edward Elgar.
- Troussard, X., Panis-Cendrowicz, V. and Guerrier, J. (eds), “Article 16. Preferential Treatment for Developing Countries”, in von Schroeder, S. and Stoll, P.T (eds), *The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Springer.
- Voon, T. (2007), *Cultural Products and the World Trade Organization*, Cambridge University Press.