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Tania Voon

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## **Cultural Products and the World Trade Organization**

Debate about trade and culture has a long history, but the application of WTO rules to cultural products such as films, radio, and books remains one of the most divisive issues in the organisation. After assessing the economic and social arguments for treating cultural products differently from things like steel or wheat, this book explains how the vastly different views of WTO Members in earlier negotiations led to an outcome that is disappointing for all. It goes on to provide a comprehensive evaluation of possible solutions, including evolution of the law through WTO dispute settlement, a new agreement outside the WTO, and reforms to improve the balance between trade liberalisation and cultural policy objectives. As UNESCO's new convention affecting trade and cultural diversity is due to enter into force in 2007 and the WTO's Doha Round of negotiations is stumbling, the need for such an evaluation is all the more pressing.

TANIA VOON is Senior Lecturer in Law at the University of Melbourne. From 2003 to 2005, she was Legal Officer in the Appellate Body Secretariat of the WTO. Tania studied law at the University of Cambridge (Ph.D.), Harvard Law School (LL.M.), and the University of Melbourne (LL.B. (Hons), Grad. Dip. Intl. L.). She has taught WTO law in Canada and Australia and published extensively in leading journals.

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Agreement on Agriculture	<i>Agreement on Agriculture</i> , LT/UR/A-1A/2 (signed 15 April 1994)
Agreement on Government Procurement	<i>Agreement on Government Procurement</i> , LT/UR/A-4/PLURI/2 (signed 15 April 1994)
Agreement on Trade in Civil Aircraft	<i>Agreement on Trade in Civil Aircraft</i> , LT/UR/A-4/PLURI/1 (signed 15 April 1994)
Anti-Dumping Agreement	<i>Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994</i> , LT/UR/A-1A/3 (signed 15 April 1994)
DSU	<i>Understanding on Rules and Procedures Governing the Settlement of Disputes</i> , LT/UR/A-2/DS/U/1 (signed 15 April 1994)
Enabling Clause	<i>Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries</i> , L/4903, BISD 26S/203 (28 November 1979)
GATS	<i>General Agreement on Trade in Services</i> , LT/UR/A-1B/S/1 (signed 15 April 1994)
GATT 1947	<i>General Agreement on Tariffs and Trade</i> , LT/UR/A-1A/1/GATT/2 (signed 30 October 1947)
GATT 1994	<i>General Agreement on Tariffs and Trade</i> , LT/UR/A-1A/1/GATT/1 (signed 15 April 1994)
Marrakesh Agreement	<i>Marrakesh Agreement Establishing the World Trade Organization</i> , LT/UR/A/2 (signed 15 April 1994)
Safeguards Agreement	<i>Agreement on Safeguards</i> , LT/UR/A-1A/8 (signed 15 April 1994)
SCM Agreement	<i>Agreement on Subsidies and Countervailing Measures</i> , LT/UR/A-1A/9 (signed 15 April 1994)
SPS Agreement	<i>Agreement on the Application of Sanitary and Phytosanitary Measures</i> , LT/UR/A-1A/12 (signed 15 April 1994)

Short title	Full citation
Textiles Agreement	<i>Agreement on Textiles and Clothing</i> , LT/UR/A-1A/11 (signed 15 April 1994) (now expired)
TRIPS Agreement	<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i> , LT/UR/A-1C/IP/1 (signed 15 April 1994)
WTO agreements	The Marrakesh Agreement and the documents contained in its four annexes

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<i>Argentina – Footwear (EC)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R (circulated 14 December 1999)
<i>Argentina – Hides and Leather</i>	Panel Report, <i>Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather</i> , WT/DS155/R (circulated 19 December 2000)
<i>Argentina – Poultry Anti-Dumping Duties</i>	Panel Report, <i>Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil</i> , WT/DS241/R (circulated 22 April 2003)
<i>Argentina – Preserved Peaches</i>	Panel Report, <i>Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches</i> , WT/DS238/R (circulated 14 February 2003)
<i>Argentina – Textiles and Apparel</i>	Appellate Body Report, <i>Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items</i> , WT/DS56/AB/R and Corr.1 (circulated 27 March 1998)
<i>Australia – Salmon</i>	Appellate Body Report, <i>Australia – Measures Affecting Importation of Salmon</i> , WT/DS18/AB/R (circulated 20 October 1998)
<i>Brazil – Aircraft</i>	Appellate Body Report, <i>Brazil – Export Financing Programme for Aircraft</i> , WT/DS46/AB/R (circulated 2 August 1999)
<i>Brazil – Aircraft (Article 21.5 – Canada II)</i>	Panel Report, <i>Brazil – Export Financing Programme for Aircraft, Second Recourse by Canada to Article 21.5 of the DSU</i> , WT/DS46/RW/2 (circulated 26 July 2001)
<i>Brazil – Desiccated Coconut</i>	Appellate Body Report, <i>Brazil – Measures Affecting Desiccated Coconut</i> , WT/DS22/AB/R (circulated 21 February 1997)

Short title	Full citation
<i>Border Tax Adjustments</i>	GATT Working Party Report, <i>Border Tax Adjustments</i> , L/3464, BISD 18S/97 (adopted 2 December 1970)
<i>Canada – Autos</i>	Appellate Body Report, <i>Canada – Certain Measures Affecting the Automotive Industry</i> , WT/DS139/AB/R, WT/DS142/AB/R (circulated 31 May 2000) Panel Report, <i>Canada – Certain Measures Affecting the Automotive Industry</i> , WT/DS139/R, WT/DS142/R (circulated 11 February 2000)
<i>Canada – Patent Term</i>	Appellate Body Report, <i>Canada – Term of Patent Protection</i> , WT/DS170/AB/R (18 September 2000)
<i>Canada – Periodicals</i>	Appellate Body Report, <i>Canada – Certain Measures Concerning Periodicals</i> , WT/DS31/AB/R (circulated 30 June 1997) Panel Report, <i>Canada – Certain Measures Concerning Periodicals</i> , WT/DS31/R and Corr.1 (circulated 14 March 1997)
<i>Canada – Wheat Exports and Grain Imports</i>	Appellate Body Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/AB/R (30 August 2004)
<i>Chile – Alcoholic Beverages</i>	Appellate Body Report, <i>Chile – Taxes on Alcoholic Beverages</i> , WT/DS87/AB/R, WT/DS110/AB/R (circulated 13 December 1999) Panel Report, <i>Chile – Taxes on Alcoholic Beverages</i> , WT/DS87/R, WT/DS110/R (circulated 15 June 1999)
<i>Chile – Price Band System</i>	Appellate Body Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i> , WT/DS207/AB/R (circulated 23 September 2002)
<i>Dominican Republic – Import and Sale of Cigarettes</i>	Appellate Body Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/AB/R (circulated 25 April 2005) Panel Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/R (circulated 26 November 2004)
<i>EC – Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/AB/R (circulated 12 March 2001) Panel Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/R and Add.1 (circulated 18 September 2000)

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<i>EC – Bananas III (Article 21.5 – EC)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas, Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS27/RW/EEC and Corr.1 (circulated 12 April 1999)
<i>EC – Bananas III (Ecuador)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Ecuador</i> , WT/DS27/R/ECU (circulated 22 May 1997)
<i>EC – Bed Linen</i>	Appellate Body Report, <i>European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India</i> , WT/DS141/AB/R (circulated 1 March 2001)
<i>EC – Biotech</i>	Panel Report, <i>European Communities – Measures Affecting the Approval and Marketing of Biotech Products</i> , WT/DS291/R, WT/DS292/R, WT/DS293/R (circulated 29 September 2006)
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<i>EC – Computer Equipment</i>	Appellate Body Report, <i>European Communities – Customs Classification of Certain Computer Equipment</i> , WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R (circulated 5 June 1998)
<i>EC – Export Subsidies on Sugar</i>	Appellate Body Report, <i>European Communities – Export Subsidies on Sugar</i> , WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R (circulated 28 April 2005)
<i>EC – Hormones</i>	Appellate Body Report, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WT/DS26/AB/R, WT/DS48/AB/R (circulated 16 January 1998)

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<i>EC – Hormones (US)</i>	Panel Report, <i>EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States</i> , WT/DS26/R/USA (circulated 18 August 1997)
<i>EC – Hormones (US)</i> (Article 22.6 – EC)	Decision by the Arbitrators, <i>European Communities Measures Concerning Meat and Meat Products (Hormones), Original Complaint by the United States – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU</i> , WT/DS26/ARB (circulated 12 July 1999)
<i>EC – Poultry</i>	Appellate Body Report, <i>European Communities – Measures Affecting the Importation of Certain Poultry Products</i> , WT/DS69/AB/R (circulated 13 July 1998)  Panel Report, <i>European Communities – Measures Affecting the Importation of Certain Poultry Products</i> , WT/DS69/R (circulated 12 March 1998)
<i>EC – Sardines</i>	Appellate Body Report, <i>European Communities – Trade Description of Sardines</i> , WT/DS231/AB/R (circulated 26 September 2002)
<i>EC – Tariff Preferences</i>	Award of the Arbitrator, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/14 (circulated 20 September 2004)  Appellate Body Report, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/AB/R (circulated 7 April 2004)  Panel Report, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/R (circulated 1 December 2003)
<i>EC – Trade Marks and Geographical Indications</i>	Panel Reports, <i>European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs</i> , WT/DS290/R (Australia), WT/DS174/R (US) (circulated 15 March 2005)
<i>EC – Tube or Pipe Fittings</i>	Appellate Body Report, <i>European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil</i> , WT/DS219/AB/R (circulated 22 July 2003)

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<i>EEC – Oilseeds I</i>	GATT Panel Report, <i>European Economic Community – Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins</i> , L/6627, BISD 37S/86 (adopted 25 January 1990)
<i>Greece – Import Taxes</i>	GATT Panel Report, <i>Special Import Taxes Instituted by Greece</i> , G/25, BISD 1S/48 (adopted 3 November 1952)
<i>India – Patents (US)</i>	Appellate Body Report, <i>India – Patent Protection for Pharmaceutical and Agricultural Chemical Products</i> , WT/DS50/AB/R (circulated 19 December 1997)
<i>Indonesia – Autos</i>	Panel Report, <i>Indonesia – Certain Measures Affecting the Automobile Industry</i> , WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R and Corr.1, 2, 3, 4 (circulated 2 July 1998)
<i>Japan – Alcoholic Beverages I</i>	GATT Panel Report, <i>Japan Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages</i> , L/6216, BISD 345/83 (adopted 10 November 1987)
<i>Japan – Alcoholic Beverages II</i>	Appellate Body Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (circulated 4 October 1996) Panel Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/R, WT/DS10/R, WT/DS11/R (circulated 11 July 1996)
<i>Japan – Film</i>	Panel Report, <i>Japan – Measures Affecting Consumer Photographic Film and Paper</i> , WT/DS44/R (circulated 31 March 1998)
<i>Japan – Leather II (US)</i>	GATT Panel Report, <i>Japanese Measures on Imports of Leather</i> , L/5623, BISD 31S/94 (adopted 15 May 1984)
<i>Korea – Alcoholic Beverages</i>	Appellate Body Report, <i>Korea – Taxes on Alcoholic Beverages</i> , WT/DS75/AB/R, WT/DS84/AB/R (circulated 18 January 1999) Panel Report, <i>Korea – Taxes on Alcoholic Beverages</i> , WT/DS75/R, WT/DS84/R (circulated 17 September 1998)
<i>Korea – Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R, WT/DS169/AB/R (circulated 11 December 2000)
<i>Korea – Dairy</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R (circulated 14 December 1999)
<i>Korea – Procurement</i>	Panel Report, <i>Korea – Measures Affecting Government Procurement</i> , WT/DS163/R (circulated 1 May 2000)

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<i>Mexico – Taxes on Soft Drinks</i>	Appellate Body Report, <i>Mexico – Tax Measures on Soft Drinks and Other Beverages</i> , WT/DS308/AB/R (circulated 6 March 2006) Panel Report, <i>Mexico – Tax Measures on Soft Drinks and Other Beverages</i> , WT/DS308/R (circulated 7 October 2005)
<i>Mexico – Telecoms</i>	Panel Report, <i>Mexico – Measures Affecting Telecommunications Services</i> , WT/DS204/R (circulated 2 April 2004)
<i>Thailand – Cigarettes</i>	GATT Panel Report, <i>Thailand – Restriction on Importation of and Internal Taxes on Cigarettes</i> , DS10/R, BISD 37S/200 (adopted 7 November 1990)
<i>Thailand – H-Beams</i>	Appellate Body Report, <i>Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland</i> , WT/DS122/AB/R (circulated 12 March 2001)
<i>Turkey – Textiles</i>	Appellate Body Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/AB/R (circulated 22 October 1999) Panel Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/R (circulated 31 May 1999)
<i>US – Carbon Steel</i>	Appellate Body Report, <i>United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany</i> , WT/DS213/AB/R and Corr.1 (circulated 28 November 2002)
<i>US – Certain EC Products</i>	Panel Report, <i>United States – Import Measures on Certain Products from the European Communities</i> , WT/DS165/R and Add.1 (circulated 17 July 2000)
<i>US – Corrosion-Resistant Steel Sunset Review</i>	Appellate Body Report, <i>United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan</i> , WT/DS244/AB/R (circulated 15 December 2003) Panel Report, <i>United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan</i> , WT/DS244/R (circulated 14 August 2003)
<i>US – Cotton Yarn</i>	Appellate Body Report, <i>United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan</i> , WT/DS192/AB/R (circulated 8 October 2001)
<i>US – FSC</i>	Appellate Body Report, <i>United States – Tax Treatment for ‘Foreign Sales Corporations’</i> , WT/DS108/AB/R (circulated 24 February 2000)
<i>US – Gambling</i>	Appellate Body Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and</i>

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	<i>Betting Services</i> , WT/DS285/AB/R (circulated 7 April 2005)
US – Gasoline	Panel Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/R (circulated 10 November 2004)
	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/AB/R (circulated 29 April 1996)
	Panel Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/R (circulated 29 January 1996)
US – Hot-Rolled Steel	Appellate Body Report, <i>United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i> , WT/DS184/AB/R (circulated 24 July 2001)
US – Lamb	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/AB/R, WT/DS178/AB/R (circulated 1 May 2001)
US – Line Pipe	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/AB/R (circulated 15 February 2002)
	Panel Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/R (circulated 29 October 2001)
US – Malt Beverages	GATT Panel Report, <i>United States – Measures Affecting Alcoholic and Malt Beverages</i> , DS23/R, BISD 39S/206 (adopted 19 June 1992)
US – Offset Act (Byrd Amendment)	Appellate Body Report, <i>United States – Continued Dumping and Subsidy Offset Act of 2000</i> , WT/DS217/AB/R, WT/DS234/AB/R (circulated 16 January 2003)
US – Oil Country Tubular Goods Sunset Reviews	Appellate Body Report, <i>United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina</i> , WT/DS268/AB/R (circulated 29 November 2004)
US – Section 211 Appropriations Act	Appellate Body Report, <i>United States – Section 211 Omnibus Appropriations Act of 1998</i> , WT/DS176/AB/R (circulated 2 January 2002)
US – Section 301 Trade Act	Panel Report, <i>United States – Sections 301–310 of the Trade Act of 1974</i> , WT/DS152/R (circulated 22 December 1999)
US – Shrimp	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/AB/R (circulated 12 October 1998)

Short title	Full citation
<i>US – Shrimp (Article 21.5 – Malaysia)</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products, Recourse to Article 21.5 of the DSU by Malaysia</i> , WT/DS58/AB/RW (circulated 22 October 2001)
<i>US – Softwood Lumber V</i>	Appellate Body Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/AB/R (circulated 11 August 2004)
<i>US – Steel Safeguards</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Certain Steel Products</i> , WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R (circulated 10 November 2003)
<i>US – Superfund</i>	GATT Panel Report, <i>United States – Taxes on Petroleum and Certain Imported Substances</i> , L/6175, BISD 34S/136 (adopted 17 June 1987)
<i>US – Taxes on Automobiles</i>	GATT Panel Report, <i>United States – Taxes on Automobiles</i> , DS31/R (11 October 1994, unadopted)
<i>US – Tuna (Mexico)</i>	GATT Panel Report, <i>United States – Restrictions on Imports of Tuna</i> , DS21/R, BISD 39S/155 (3 September 1991, unadopted)
<i>US – Underwear</i>	Appellate Body Report, <i>United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear</i> , WT/DS24/AB/R (circulated 10 February 1997)
<i>US – Upland Cotton</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R (circulated 3 March 2005) Panel Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/R, Add.1–3, and Corr.1 (circulated 8 September 2004)
<i>US – Wheat Gluten</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R (circulated 22 December 2000)
<i>US – Wool Shirts and Blouses</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R and Corr.1 (circulated 25 April 1997)
<i>US – Zeroing (Japan)</i>	Panel Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews</i> , WT/DS322/R (circulated 20 September 2006)

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**Other abbreviations**

Short name	Long name
1993 Scheduling Guidelines	Uruguay Round Group of Negotiations on Services, GATT, <i>Scheduling of Initial Commitments in Trade in Services: Explanatory Note</i> , MTN.GNS/W/164 (3 September 1993)
2001 Scheduling Guidelines	Council for Trade in Services, WTO, <i>Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS): Adopted by the Council for Trade in Services on 23 March 2001, S/L/92</i> (28 March 2001)
ACUNS	Academic Council on the United Nations System
ASIL	American Society of International Law
Beirut Agreement	<i>Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character</i> , 197 UNTS 3 (adopted 10 December 1948)
Cartagena Protocol	<i>Cartagena Protocol on Biosafety to the Convention on Biological Diversity</i> , 39 ILM 1027 (adopted 29 January 2000)
Convention for the Protection of Cultural Heritage	<i>Convention for the Protection of the World Cultural and Natural Heritage</i> , 1037 UNTS 151 (adopted 16 November 1972)
Convention on Biological Diversity	<i>Convention on Biological Diversity</i> , 1760 UNTS 79; 31 ILM 818 (adopted 5 June 1992)
Convention on Cultural Property in Armed Conflict	<i>Convention for the Protection of Cultural Property in the Event of Armed Conflict</i> , 249 UNTS 240 (adopted 14 May 1954)
Convention on Migratory Species	<i>Convention on the Conservation of Migratory Species of Wild Animals</i> , 1651 UNTS 333; 19 ILM 11 (adopted 23 June 1979)
CPC	Central Product Classification
CRTC	Canadian Radio-Television and Telecommunications Commission
CUSFTA	<i>Canada United States Free Trade Agreement</i> , 27 ILM 281; 2 BDIEL 359 (signed 2 January 1988)

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Short name	Long name
Document W/120	Uruguay Round Group of Negotiations on Services, GATT, <i>Services Sectoral Classification List – Note by the Secretariat</i> , MTN.GNS/W/120 (10 July 1991)
Doha Declaration	Ministerial Conference, WTO, <i>Ministerial Declaration adopted on 14 November 2001</i> , WT/MIN(01)/DEC/1 (20 November 2001)
DSB	Dispute Settlement Body
EC	European Communities
EC Treaty	<i>Treaty establishing the European Community</i> , OJ C340, 173; 37 ILM 79 (signed 25 March 1957), consolidated version OJ C325, 33 (24 December 2002)
ELSA	European Law Students' Association
European Convention on Human Rights	<i>Convention for the Protection of Human Rights and Fundamental Freedoms</i> , 213 UNTS 221; ETS 5 (signed 4 November 1950), as amended by Protocol No. 11 (ETS 155)
Florence Agreement	<i>Agreement on the Importation of Educational, Scientific and Cultural Materials</i> , 131 UNTS 25 (adopted 17 June 1950)
GSP	Generalised System of Preferences
Harmonized System	Nomenclature set out in <i>International Convention on the Harmonized Commodity Description and Coding System</i> , 1503 UNTS 167 (signed 14 June 1983), annex
Hong Kong Declaration	Ministerial Conference, WTO, <i>Doha Work Programme: Ministerial Declaration Adopted on 18 December 2005</i> , WT/MIN(05)/DEC (22 December 2005)
ICCPR	<i>International Covenant on Civil and Political Rights</i> , 999 UNTS 171 (adopted 16 December 1966)
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i> , 999 UNTS 3 (adopted 16 December 1966)
ICJ	International Court of Justice
ILC	International Law Commission
INCD	International Network for Cultural Diversity
INCP	International Network on Cultural Policy
Indigenous and Tribal Peoples Convention	<i>Indigenous and Tribal Peoples Convention</i> , ILO Convention 169 (adopted 27 June 1989)

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Short name	Long name
July Package	General Council, WTO, <i>Decision Adopted by the General Council on 1 August 2004</i> , WT/L/579 (2 August 2004)
MAI	Multilateral Agreement on Investment
MFN	Most-favoured nation
NAFTA	<i>North American Free Trade Agreement</i> , 32 ILM 289 and 605 (signed 17 December 1992)
Nairobi Protocol	<i>Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials</i> , 1259 UNTS 3 (adopted 26 November 1976)
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
SAGIT	Sectoral Advisory Group on International Trade
Television Without Frontiers Directive	Council of the European Communities, EC, <i>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</i> , OJ L298, 23 (17 October 1989) as amended by European Parliament and Council of the European Union, <i>Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities</i> , OJ L202, 60 (30 July 1997)
TPRB	Trade Policy Review Body
UDHR	UN, <i>Universal Declaration of Human Rights</i> , GA Res. 217A(III) (10 December 1948)
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UN Declaration on Minorities	General Assembly, UN, <i>Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities</i> , A/RES/47/135 (18 December 1992)
UNESCO	United Nations Educational, Scientific and Cultural Organization

Short name	Long name
UNESCO Convention	UNESCO, <i>Convention on the Protection and Promotion of the Diversity of Cultural Expressions</i> , CLT-2005/CONVENTION DIVERSITE-CULT REV (adopted 20 October 2005, entering into force 18 March 2007)
UNESCO Convention on Cultural Property	<i>Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property</i> , [1972] UNTS 230 (adopted 14 November 1970)
UNESCO Recommendation on Participation in Cultural Life	UNESCO, <i>Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It</i> , 19 C/Resolutions, annex I, 29 (26 November 1976)
UNIDROIT Convention on Cultural Objects	<i>UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects</i> , Diplomatic Conference for the Adoption of the Draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects, Rome – Acts and Proceedings 1996 (adopted 24 June 1995)
Universal Declaration on Cultural Diversity	UNESCO, <i>Records of the General Conference, 31st Session, vol. I: Resolutions</i> (15 October to 3 November 2001) 61, Resolution 25.
US or USA	United States of America
USTR	United States Trade Representative
VCLT	<i>Vienna Convention on the Law of Treaties</i> , 1155 UNTS 331 (adopted 22 May 1969)
WTO	World Trade Organization

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## Foreword

Whether you stand closer to the trade side or the culture side in the trade and culture debate, or if you have not yet decided where your sympathies lie, you would do well to read Dr Voon's informative and insightful book on *Cultural Products and the World Trade Organization*. The trade and culture dilemma is not new, but Dr Voon's proposed solution is.

'Trade and ...' questions tend to pit one side against the other, and the literature so often promotes only one view, while undermining conflicting approaches. The virtue of Dr Voon's study is that it avoids this tendency and instead provides a balanced and thoughtful view of the highly complex issues surrounding the challenge of protecting and promoting culture and cultural diversity, while at the same time pursuing the goal of further trade liberalisation among States. The key to addressing this debate is to acknowledge, as Dr Voon does, that cultural products have cultural as well as commercial value, and to understand, as Dr Voon so clearly explains, that cultural value is highly prized, just as is the multi-billion-dollar industry that produces cultural products.

Dr Voon explores what she describes as 'a particular notion of culture' as it relates to defined cultural products – film, video, radio, television, sound recordings, books, magazines, and periodicals – that are created or provided by cultural industries – audiovisual, printing, and publishing. The highly readable review of the current treatment of cultural products in the WTO demonstrates that the trade and culture stalemate in the WTO is no longer tenable and that, unless the WTO addresses the problem soon, it will effectively abdicate to other organisations that have no interest in the trade side of this issue. Indeed, while WTO Members have been satisfied with merely agreeing to disagree, UNESCO adopted in 2005 a *Convention on the Protection and Promotion of*

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*the Diversity of Cultural Expressions*, which could have a profound and unpredicted influence on WTO Members that are also members of UNESCO in their WTO negotiating positions and in resolving trade disputes about cultural products. Dr Voon's discussion of this new Convention as well as other international and domestic initiatives for promoting and protecting cultural products is highly instructive in this regard.

Dr Voon opines that promotion and preservation of culture are legitimate regulatory objectives of WTO Members and that cultural policy measures can achieve their cultural goals without unduly restricting trade. She maintains, however, that existing WTO rules do not promote or ensure a balance between Members' cultural objectives and trade liberalisation. She points to the lack of clarity and predictability in the rules, due in part to the stark differences in treatment between the GATT 1994 and the GATS and the fact that cultural products, often having both goods and services features, may be subject to diverging rules. Another problem with the current rules is the uncertainty about 'safety valves' or exceptions currently available in respect of cultural policy measures. Moreover, the GATS 'bottom-up' approach serves as an effective bar to further trade liberalisation in cultural products because Members are free to refrain from making commitments, a course most Members have chosen in respect of cultural products. As Dr Voon explains, this not only undermines trade liberalisation in cultural products, but could also lead to cultural isolation rather than cultural diversity.

The WTO's dispute settlement system has played a central role in addressing a number of issues that, like the trade and culture conundrum, have been left unresolved in the various WTO agreements. A significant body of case law has been developed that clarifies Members' rights and obligations in a number of areas. However, it provides little guidance for those seeking solutions to the trade and culture issue and it is unlikely to prove effective in the future in improving the treatment of cultural products in the WTO. This is because dispute settlement cannot solve the problem of the GATT/GATS incompatibility, as this is possible only through an amendment of the current rules. And although Dr Voon points to the vast array of international law applicable to cultural products and cultural rights and provides thoughtful ideas as to where helpful approaches might be found, she acknowledges that its utility in WTO dispute settlement is likely to be limited. The fiercely debated and as yet unresolved issue of the role of

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international law generally in WTO dispute settlement and the WTO Appellate Body's reluctance thus far to look very far afield – such as in multilateral conventions – to determine the extent of Members' rights and obligations under WTO agreements means that international law governing cultural products will not play a significant role in resolving trade and culture disputes in the WTO. Thus, as Dr Voon correctly concludes, the trade/culture problem is unlikely to be resolved through recourse to the WTO dispute settlement system.

Dr Voon's analysis makes clear that the best choice for resolving legal aspects of trade in cultural products is through improvements to existing WTO agreements. Negotiating a reconciliation between trade and culture will no doubt be extremely difficult; indeed, it has eluded trade diplomats for many years. But finding a diplomatic solution will be preferable to leaving the controversy to be resolved in other forums where the objective of trade liberalisation is beside the point, an outcome that is increasingly likely, given UNESCO's 2005 Convention.

As Dr Voon puts it, there is no need to portray the trade and culture impasse *à la* 'film noir', with gloomy lighting and fatalistic characters. For Dr Voon offers an optimistic script, which calls for harmonising the treatment of cultural products as goods and services and subjecting all cultural products to the requirements of MFN, national treatment and market access, tempered by clearly defined exceptions such as discriminatory subsidisation. She suggests that these changes could be effected through an annex on cultural products along the lines of the annexes on air transport services and financial services.

At this point, we do not know how the trade and culture story will end. Dr Voon offers some thoughtful and creative ideas on how this plot can move forward. In the meantime, I nominate Dr Voon's script for the *Palme D'Or*, and I am waiting for the sequel.

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