

# "Cultural exception", national policies and globalisation: imperatives in democratisation and promotion of contemporary culture

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■ *This article examines the doctrine of cultural exception, its crisis in the GATT controversy of 1993 and the consequences for France and Europe. It analyses the diplomatic and public mobilisation in reaction to the event and a semantic drift from use of the term "exception" to that of "diversity". The crisis experienced by the cultural exception is shown as having had a positive throwback in the promotion of contemporary culture and a more vigorous democratisation of European cultural industries, in addition to awareness of the weight of film and audiovisual works in identity and identification.*

*Future strategies for the preservation of cultural diversity are examined in the context of globalisation and technological developments. Among the most fruitful are those which aim to resolve the tensions between globalisation and media, format and content pluralism; welding a common front between those advocating diversity in Europe and other regions in the world.*

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## **Introduction**

A pithy expression, which has the benefit of being concise and the inconvenience of being ambiguous, "cultural exception" aims to legitimise the regulatory and financial intervention of public authorities in correcting international distortions resulting from a market economy. The term is firstly applied to films and secondly to audiovisual works, and consists in the application by Nation States of measures to support local creation and production, particularly in Europe. One of the major cultural facts of the post-WWII era is thus taken into account: the utilisation of the media for politics of identity (with the corresponding utilisation of fiction for soft symbolic propaganda). The term is now understood as a political measure seeking to preserve the public domain and to favour cultural diversity and democratic pluralism. This has not always been the case: at its origin in 1993 it served to oppose two camps, the United States against the European Union (and France in particular). What is striking however is the late emergence of the debate and its relatively short duration, May to December 1993, compared to the rest of the GATT process. Was it in fact a sudden burst of national conscience? A hardening of approach by countries in direct competition? Or a profound socio-cultural schism, that continues ?

## **1. The crisis of 1993: the first post-cold war cultural confrontation**

The Uruguay Round multilateral negotiations bearing on deregulation of international trade, began in 1986; they were scheduled to conclude in 1990 but were not closed until April 1994. 117 countries representing the partners of the

*General Agreement on Tariffs and Trade* (GATT) were included. Installed after WWII, this agreement provided for rounds of negotiations, each round including new sectors to be liberalised from international customs restrictions. Uruguay put services and intellectual property on the table.

The debate on "cultural exception" is one of the first post-cold war confrontations to have tested the alliance between Atlantic countries. And it is perhaps for this aspect that it will be remembered. The post-cold war had not in fact questioned the political, strategic and military prominence of the United States; however a tentative resistance to American domination can be discerned in the diplomatic and socio-cultural axes. The "cultural exception" is an example: it is a strategy of contained resistance, less against a roughshod America than against a seductive America, the country of HHMMS, the "Harvard and Hollywood, McDonald's and Microsoft Syndrome" (Joffe). It represents the first real conflagration between the idea of globalisation and that of Americanisation.

The debate's hesitation in declaring itself is without doubt due to Europe's difficulty in presenting an united front at the time (it was engaged in discussion on terms of governance, entry of new members, details of single currency etc) and taking a stand as non-American whilst avoiding anti-Americanism. The situation of dependence and expectation with respect to the United States certainly slowed its reactions, though legitimate, when having to defend certain national values and structures of distributive justice menaced by market liberalisation. By the rejection of non-European values carried by the American project, European identifiers are thus stamped negatively in the cultural exception: a controlled market, an affirmative role for the State, a individualism dosed with social welfare and public service, a universal vision of human rights – effectively concepts issued from a world vision inherited from catholic rather than protestant religiosity, though secularised in France's case (Frau-Meigs 2001; Venturelli 1999).

## 1. 1 The camps and their arguments

Two camps were in opposition in May 1993 subsequent to the French standpoint of "cultural exception", refusing the inclusion of cinema (and to a lesser degree audiovisual works) in the list of products and services to be "liberalised":

- "Free-traders" (or hyper liberals from the European point

of view) who favoured total deregulation of protective policies championed by the United States (but not alone);

- "Exceptionists" (or protectionists according to the United States) who wanted the maintenance of national industries without however hermetically sealing their borders. Their champion was the European Union, propelled by France and supported by Canada.

According to the exceptionists, countries have the right to conduct national policies aiming to support domestic cultural industries. They thus wish to maintain public aid strategies established for art and culture, with an extension to take into account cinema, art's last-born. They are not however in favour of an iron curtain, because they recognise, pragmatically, their dependence with respect to American collections and catalogues and they are not opposed to technical innovation or economic evolution.

Economically however, the exceptionists consider that the global market in question is a false market, dominated by a small number of multinationals steered by the United States (or whose principal shareholders are American pension funds). Certain even denounce the reality of American protectionism, a country which imports less than 1% of worldwide cinematographic production. Culturally they are also against the perception that cinema (and audiovisual) is a simple entertainment industry, seeing it instead as an art, a heritage.

The Free-traders, on the contrary, consider that cinema is entertainment, at heart an industry in the same way as the bicycle or card games; they reject any idea of protecting this industry, arguing from the standpoint that they themselves have no concerted federal policy concerning communication, information and culture. And there is indeed no ministry in the United States responsible for these sectors, which are instead regrouped under the Ministry of Economy and Trade. With neither ambiguity nor soul-searching then, they request the abrogation of all customs restrictions and state subsidies for these products.

## 1.2 Stumbling blocks

Several public aid mechanisms lay at the heart of the 1993 crisis, which explains the unconditional nature of the confrontation between the USA on one hand and France and Canada on the other (but the European Union as a whole was also concerned). France has had, since 1948, a

law on cinema subsidisation. This law created a tax applicable to each person going to the cinema (added on to ticket sales price). Taxation revenue is paid into a state-managed fund and trickled down to French film producers. In addition, from 1958, under André Malraux, cinema was attached to the Ministry of Culture, which demonstrates that it is not considered an industry but rather an art, not as a means but an end. Cinema has also benefited from the implementation of "advance on takings" which is a zero interest loan (repaid only if ticket sales are sufficient).

The 1993 confrontation launched by the United States concerned these measures, seen as a violation of free-trade and as a state subsidy infringing fair competition. America considered that American films (and thus American corporations) were paying for French national cinema.

Other mechanisms aggravated America, in particular broadcasting quotas, applied principally by Canada and France but also (in a non-official capacity) by other European countries, especially since the October 3, 1989, "Television without frontiers" directive. Implemented by the European Community, the directive, and especially sections 4 and 5, provide independent production and programming objectives "when such is obtainable", weighted in favour of national programmes and European (co)productions. Indicative quotas of 50% are given, applied depending on the country (sanctions however are not imposed for non-implementation).

America considered the measures overly protectionist and an obstacle to market penetration of their programmes in national broadcasting. They adopted a radical position with three rallying cries: application of the non-discrimination principle (free market access, implying suppression of a quota system), national status (American firms and programmes should benefit from the same aid as that allocated to national firms and programmes) and they added a Most Favoured Nation clause (granting all nations the most favourable advantage already granted to another nation, in order to multilaterally apply clauses which had been agreed bilaterally).

### **1.3 Negotiation results: calm after the storm**

A last minute compromise was signed in Marrakech in 1994, which solved nothing. The agreement relegated cinematographic and audiovisual productions to the

"services" list, to which GATT norms apply. However, provisions for services allow all sorts of departures from the ordinary GATT rules. The compromise is thus a halfway house for principles drawn from exception (French position) and differentiation (European position). Europe had finally opted for the idea of exemption – allowing services to avoid certain constraints. The absence of decisive agreement signified that the European Union was not obliged to implement liberalising initiatives and that cultural policies could continue to be based on subsidies and quotas. What is more the "Television without frontiers" directive could be applied; it had been reinforced moreover by the arrival of new media (cable, satellite, TNT). Europe thus preserved its view on cultural products and avoided constraints, keeping open a self-steered approach to free-trade.

Use of the term "services" also demonstrates an unwillingness to tackle the issues of what exactly are audiovisual works (films? documentaries? studio broadcasts? games?) and their national appurtenance (based on language used in the work? the director's nationality? filming location?). Supple and scantily defined terms were kept, so that each country could interpret them in their favour. This allowed the European Union to maintain its standpoint, namely that differentiating provisions are authorised with respect to film and audiovisual works, disposing of cultural nature they are not ordinary commodities services.

The compromise's fragility came to the fore some months after the GATT agreements, in the context of the *Organisation for Economic Cooperation and Development* (OECD) a grouping of thirty of the most developed countries. New conflicts emerged with respect to the *Multilateral Agreement on Investments* (MAI) which confirmed the hardened attitude of the two camps. The OECD proposal was less global than GATT but still as liberal: it allowed companies from different Member States to freely invest in other member countries, without preferential treatment for local companies. All sectors of a country's economy, without exception, were to be opened to investors. Cash advances, preferential rate loans, tax bonuses, had to be abandoned as well as all other national policies designed to support production. Above all, MAI, contrary to GATT, provided financial sanctions for recalcitrant nations. Applied to cinema and television, the

MAI norms would have spelt the end for different cultural policies and state aid mechanisms in European countries and Canada<sup>4</sup>. The MAI agreement capsized, following massive rallying by professionals and political personalities. Some countries had opposed strong resistance and six members (Belgium, Canada, Spain, France, Greece and Italy) had obtained the exclusion of cultural products from the agreement.

## **2. Mobilisation during, and since, 1993**

Since 1993, free-traders and exceptionists have entrenched their positions. Arguments have crystallised, and been extended, feeding diplomatic and public debates. It's more than the relationship between art and money, the cultural exception touches deep issues of identity, opposing France and the United States (Frau-Meigs, 2001). Since 1993, a certain drift has occurred, with the double realisation that globalisation is the result of market forces, but that it must also be incarnated in a societal vision. In this new context, exception represents less a combat between two hegemonies (American versus European) than a need for distinction and affirmation of minority and regional representations of identity, affecting all countries of the world.

The debate is characterised by the telescoping of the two argumentative structures which came into opposition and which have declared themselves incompatible; they are based on professions of faith more than on confirmed data, with antagonistic postulates referring to the very imperatives of civilisation. A rhetoric of diversity is opposed to that of prosperity through technological progress. Refusal of uniform content and standardisation is opposed to rejection of nationalist protectionism. Everything centres on a common object: cinema, and in the name of liberty, which is the base value shared and claimed by both camps. This sometimes leads to reversible arguments, casting a shadow of incoherence and a risk of dissolution.

### **2. 1 Diplomatic mobilisation: talking at cross-purposes ?**

In both cases, positions adopted have been extreme, no doubt to stimulate discussion and promote compromise. In addition to European market access, in 1993, the American

objective was twofold: bring a credible menace to bear on those countries which practised public and private aid, such as France and Canada; pressure other countries to dissuade them from adopting this type of policy, such as countries in transition in Eastern Europe, or Asian countries. With respect to Eastern Europe the United States would without doubt have been satisfied with the establishment of a interim phase of aid suppression, for instance a promise to "freeze" practices in the process of establishment (Gournay).

Diplomatically, the strategy was bilateral, differentiating between countries. Different types of country were thus targeted: France and Canada for quotas inscribed in a stated public policy; other European Union countries applying the "Television without frontiers" directive; other GATT countries who possibly would imitate Europe. Opposition was thus a technique of dissuasion, in particular for countries which wished to be accepted in the WTO, such as Eastern Europe and Asia (especially China), two market zones which interested USA because of the absence of a national cinema and audiovisual industry capable of rivalling Hollywood. With decisive Manicheanism all national aids for production and broadcasting were declared the worst of evils. Taking France and Canada as scapegoats, quotas were labelled the worst example of bad commercial practice, an attack on free competition and a perversion of freedom of expression.

Insofar as European and Canadian objectives were concerned, it was necessary to show that that they were not opposed to market liberalisation (contrary to what the media had suggested) but that liberalisation could not occur without taking into account different regional contexts and national expectations. Their opposition was thus one of demarcation. Economically, it consisted in protection from an overly powerful and fast invasion by American cinematographic and audiovisual products. Politically it consisted in affirming their autonomy and their difference with respect to the United States. To the Manichean American rhetoric Europe opposed a nuanced approach, in which audiovisual works and cinema, as art more than industry, could find a safe harbour from the overbearing law of supply and demand.

European countries wished to demonstrate that they were open to negotiation, but not under the draconian conditions

stipulated by America. The level of concessions to make varied for individual countries within the Union – certain Member States having varied and complex aid formulas, others with simple, unstated principles. The difficulty was ensuring that disagreements within the Union did not become more pronounced, hence the prudence shown by Member States to preserve a certain ambiguity as to the notion of exception (and proposition of alternative formulations, such as differentiation or exemption).

European objectives can thus be seen as symmetrical to American objectives: international competitiveness, trade balance, preservation of employment, development of cultural industries, decentralisation of artistic production modes. Ironically, the United States was for a long time alone to proffer these arguments; they thus appeared as trying to defend a position of strength, which is why a certain anti-Americanism was raised, the impression being that the USA refused to others the advantages they allowed themselves. The only dissymmetry – but it is one of size only – is that for European countries the departure point is socio-cultural whilst for Americans it is economic. These positions a priori as to the nature of media production irreconcilably opposed those who viewed cinema as cultural capital and those for whom it was purely market capital. For France (and to a lesser degree Europe) there is a separation between the cultural and commercial spheres, which America denies, refusing any debate from a cultural perspective.

## **2.2 Mobilisation of public opinion: a question of identity**

French and European public opinion has been firmly implicated in the cultural domain, where the formula of "exception" had a large media impact, to be either disparaged or raised as standard bearer. Several different actors contributed to the debate, such as directors of media-orientated companies, trade union and professional organisations (ADAMI, SACD, PROCIREP etc), politicians, intellectuals, etc. Positions adopted were very well defined, opposition fierce, both during negotiations and for a long time afterwards.

The exceptionists, with spokesmen such as Jack Lang or Daniel Toscan du Plantier, claimed a certain number of rights: the law of supply and demand is not enough to guarantee diversity; the means of representing a country's

identity cannot be left to a third party; defence of pluralism is a form of defending freedom of speech; creative works are not just a commodity like any other; each population has the right to develop its distinctive culture; creative freedom must be plural and pluralist. Consequently nations have certain responsibilities: public authorities have the duty of compensating for market extremes; Governments are authorised to protect media industries because of the greater financial risks they run; affirmative action measures (i.e. quotas) aid in reducing the national handicap as against Hollywood.

The free-traders, in particular through Jack Valenti, Chairman of the very powerful Motion Pictures Association of America (MPAA), formulated criticism dictated more by pragmatism and an economic logic: cultural exception is an elitist and backward looking approach; protectionism is a contravention of freedom of expression and consumption; State implication in culture does not foster talent and harms art; the "cultural exception" favours the development of an artists-in-the-unemployment-line mentality; it constitutes a block on competition and a perversion of the market; refusal to reduce costs menaces living standard improvement for the entire planet; protectionism's inefficiency leads to wastage of government funds; technological determinism will undo national policies with the effects of digitalisation (inevitably leading to dissemination of American products).

Since 1993, bowing to public opinion, the issue of national identity has been at the heart of the exceptionist debate, with a semantic (and diplomatic) drift from the notion of exception towards that of diversity: means of representation and the imperatives of imagination appearing as the tools by which a nation could gain and propagate an image of self and ensure social cohesion. Audiovisual and cinematographic works contribute to cultural socialisation of individuals; acculturation by solely American productions cannot respond to this need for identity anchorage. The debate is concerned less with the quality of the artistic production – the perception of the cultural exception as an opposition between high brow culture (French) and cheap popular culture (American) – than with the necessity to take into account the national population's needs for insertion (a point forwarded more by Canada than by France).

The most convincing argument in this respect is that of cultural diversity as firebreak to a homogenisation of world

vision by American domination, effacing national asperities, pluralism of viewpoints and favouring the smallest common denominator. Such reductionism being particularly relevant for children and adolescents, the target-audience in the United States' leisure policy, in particular through cinema and televised series (Frau-Meigs 2003a). Another argument gaining ground is that which favours a semantic displacement from the notion of exception towards that of diversity: it encourages Nation States (and the European Union) to support domestic minority cultures hitherto unrecognised, either regionally (the case of Catalonia in Spain) or with respect to ex-colonies (Great Britain with its Indian and Caribbean minorities, or France with Maghrebi and African minorities).

Free-traders have replied to this policy based on identity by denouncing a retrograde and fearful nationalism, close to jingoism and cultural isolation, a nationalism which could but condemn a country to decline. More subtly they intimated that a vital culture has no need to defend itself: if it does resort to defence, it's a sign of weakness, powerlessness. The newer argument advanced has been that a policy of "cultural exception" is a hindrance to the international expansion of national products (especially French). This is what explains the latest developments to date, fuelled with declarations by Jean-Marie Messier, then Chairman of Vivendi Universal, in December 2001, at New York: "The Franco-French cultural exception is dead" . He went on to add his own definition of diversity: "We are now in a period of cultural diversity. What does that mean? It means we must be both global and national. Vivendi's interest is to be both a major American player and to have Canal-Plus and Studio Canal as pillars of the French movie industry" (*New York Times*, 17/12/2001).

The controversy caused by Messier's bold statements well marks the problem of the semantic drift from exception to diversity: it could provoke a weakening in exceptionist positions over the long-term. However it presents the advantage of chasing away the impression of elitism and deflects criticism: it's now no longer just France that is putting a spanner in the works of the WTO but rather Hollywood which is blocking all other countries' expression of cultural diversity.

### 3. Application of the "cultural exception" (cinema and television)

Though the two camps confronted each other in the domain of rhetoric, they have also clashed in terms of actions and solutions adopted. To interpret economy or culture as a means or an end is a form of acquittal, the better to confront the other on his own territory, convince or vanquish. The cultural exception is from this point of view perhaps more the "invention" of an irreconcilable difference than a real opposition, insofar as the terms of the debate remain the same and reflect western internal tensions: globalisation is an Americanisation *and* a westernisation of the world. It does however reveal market functioning when left to itself: a tendency towards duopoly, with two entities asymmetric in terms of power but which can offer a certain resistance to the other, and thus justify the system as a whole. Parallel to HHMS and their intra-American functioning (Harvard vs Stanford, Hollywood vs Broadway, McDonald's vs Burger King, Microsoft vs Apple), the European Union emerges as the second asymmetric entity in the US/EU duopoly.

Nevertheless the deep-rootedness of the asymmetry is to be found in the past, when specific choices were made. What underlies the conflict are the cultural policies implemented by Nation States after WWII (or even before in the case of the United Kingdom). With the decline of private patronage, public institutions undertook fostering of the arts, practicing a policy of "State patronage" (Gournay 17), which is to be compared with that of the welfare state. It indicates a weakness in the market: audiences are not capable by themselves of funding art and performance. More especially the case with contemporary works.

The hidden dimension of the "cultural exception" thus appears more clearly: over and above conservation of acquired heritage, it is a method of valorising contemporary culture. The fundamental concern is the defence and promotion of contemporary art, whose vitality is essential for the future dynamism of a culture. Any interruption in the process of artistic creation, however localised and reduced, excludes an entire generation of artists and disaccustoms an entire generation of audiences from the rituals of going to the cinema or viewing national or international performances. Germany and Italy, whose cinematographic production atrophied during the 1980's and 90's, is a striking example.

The dangers of such a cultural blank are well-known: on one hand a destructive anomie, on the other a fearful and sectarian introspection (Wieworka). In both cases the social cohesion of a country suffers. In this respect the debate on cultural exception is a fruitful one, if not experienced as a regression or a perversion but rather as a sign of health and willingness to recover vitality. Its merit is to place contemporary culture firmly on the agenda and to force European countries to democratise their conception of culture – considering it less a high quality production than a federative creation by all sectors of the population.

### **3.1 The range of aid policies**

One of the interesting secondary effects of the debate has been to prolong democratisation of culture, a process begun with efforts to open museums and libraries to the general public, and continued in the domain of audiovisual works and cinema (with recent extensions towards publishing and records). European governments have been relatively slow to integrate media industries, analogue and digital, in their cultural strategies. The consumption usages of the general public have only been taken into account since the 1980's, partly because the audiovisual sector was state run and thus only placed under the microscope with the advent of private competition. The interdependence between cinematographic and audiovisual production augmented during this period, television serving as financial backer and secondary market for cinema distribution.

Since then, efforts have been made to improve radio and television programmes and to use them for cultural objectives, hoping that they will have repercussions on the appreciation of other arts, as shown by the creation of the Franco-German channel, Arte. Almost all over Europe (including central and eastern Europe with countries such as Slovenia, Czech Republic, and Hungary) cultural policies have been maintained, or even established, to preserve home-grown cinema production. Automatic aids in addition to selective aids have been provided from public coffers, even in countries outside the enlarged European Union, such as Norway or Switzerland. In France the most recent aid package consists in obliging television companies (public and private) to support national production, by channelling a part of their profits into film production or pre-purchase for broadcasting.

Side by side with national aid, the great innovation of the 1990's is the intervention of European federal organs in cultural policies. European institutions have mobilised to favour the decompartmentalisation of the common market and give it a more viable scale. The European Union renewed its "Television without frontiers" directive in 1997, maintaining quotas, whilst its revision of 2002 legitimised them once again, not without some internal bickering. Federal public service audiovisual corporation bodies have also been established with a redefined assignment to protect cultural pluralism and diversity. Since 1988 the Eurimages programme has constituted a support fund for the making of co-produced European films, necessitating the involvement of at least three countries. Since 1990 the MEDIA programme (to encourage the development, distribution and promotion of European audiovisual works) has been concerned to provide financial aid to distributors in order to facilitate the circulation of national works throughout the community and further afield: aid in translation, dubbing, printing, sub-titling, copying, advertising, establishing relations with other distributors and broadcasters (cinemas and television) etc. After two initial phases (MEDIA I, 1991-1995 and MEDIA II, 1996-2000) it is now in its third phase (MEDIA III, 2001-2005).

These measures seek to implement at a practical level the lessons drawn from American domination of the production and broadcasting market. This domination in general can be explained by Hollywood's industrial production, with multiple teams formed around the single product: the film. Such an approach allows rotation of teams and talents. The low costs in the export market are due to programme profitability in a domestic market counting 260 million consumers. The existence of filmic collections and a catalogue policy (in particular with reference to televised series, planned over at least three years) is also very attractive to television channel broadcasters. Cinema benefits moreover from an international distribution network, constructed just after WWII, when Europe was still in a process of recovery and lost control over image flows.

## **3. 2 The present state of cultural industries: a real revival, but to be confirmed**

### **3. 2.1 The European perspective**

The fruit of cultural policies established in the early 1990's ripened a decade later, the upswing occurring towards 1995, as if the GATT crisis had spurred on the exceptionists. Recent reviews demonstrate a strong growth in European film productions, but it remains mitigated, in part because of the economic crisis and the burst dot.com bubble, which had also speculated on leisure and entertainment strategies. The cinema seems to benefit more than television from the "cultural exception", which is in line with its privileged status in Europe and especially in France.

Cinema, film production in the European Union is on the rise since 1995 (625 films in 2001). The increase in volume is above all due to France, followed by Germany and Spain. In France the resurgence has been produced in films known as "French initiative", namely entirely or mainly produced by France. The Spanish growth can be principally explained by Spanish dominated co productions. The drop for the United Kingdom is a result of the decline in the number of productions backed by North American capital filmed on British soil. Central and eastern European productions (countries scheduled to join the European Union) have also shown to be positive in 2001, with the highest volumes registered in Poland and Romania.

In terms of distribution, the number of screens has continuously risen since 1995, especially in Spain and in Great Britain; but the same cannot be said for eastern and central Europe, despite the growing impact of multiplex cinema construction. As for audience levels, they have grown swiftly (more than 10% in 2001) especially in Germany, France and Spain. Countries in central and eastern Europe have also shown good results (Czech Republic, Hungary) or even spectacular (40% in Poland). Audiences tend to show a preference for local productions, which has led to an increase in national market share (41% for France and Poland, 19% for Italy, 18% for Germany and Spain). Conversely, American film market share has dropped to 64%, its lowest level since 1995 whilst for European films the average is 32%, with a confident expansion, partially due to increased audience levels for European films outside national markets. The United Kingdom however remains the biggest European film exporter, in particular through co-productions with the USA. In keeping with these figures, European film audience levels in the United States have increased by 37% in one year

(largely thanks to Spanish and French films).

Public aid to the European industry developed by approximately 13% between 2000 and 2001, the amount of aid between 1997 and 2001 increasing by 45% (i.e. 10% yearly growth). France is the only country to have represented more than a third of total aids and the five principal markets (Germany, United Kingdom, France, Italy and Spain) contributed approximately 80% of aid distributed. Since 2000, the French have seen return on their investment in cinema. More than 190 million tickets, compared with 150 million in the 1990's and more than 50% of French films in the box office (compared with 30% and 40% in previous years). Even in the American market, French productions have earned 30 million dollars (compared with 6.8 million in 2000), with the good performance of films like *Amélie* (Jean-Pierre Jeunet), *Closet* (Francis Veber), *Under the Sand* (François Ozon), *Widow of Saint-Pierre* (Patrice Leconte), etc.

Television, market trends show that the inclination to broadcast European works (national or not) varies considerably according to the channel (speciality channels having difficulties in respecting programming objectives). When they manage to comply with European quotas, most channels do so thanks to broadcasting of national works: national fiction now successfully dominating prime-time, which seems in conformity with audience expectations as to identification. American programmes no longer occupy the privileged position which was theirs during the 1980's, but remain very significant if programming is taken as a whole. Since 2000, total hours of American fiction imported is down, but this seems to be compensated for by an increase in broadcasting of transatlantic co productions or international co productions. New speciality channel programming tends to favour American works. Above all it has promoted an inflation in televisual right acquisition costs benefiting American distributors: rising from 1.7 billion dollars in 1993 to 4.4 billion in 2000.

European circulation (both televisual fiction or cinematographic works) between European countries has remained weak, almost inexistent (in particular with the United Kingdom). The most striking phenomenon in terms of Europeanisation of programming is the success of game formats, with the possibility for the same formula to be adapted from one national market to another (the example of Dutch company, Endemol's, *Big Brother* is historic in this



respect). Though these adaptations function for flux programmes, the same cannot be said at all for fictional formats, even when they have been successful in their country of origin. The distribution of works from central and eastern Europe practically does not exist.

With respect to the financial situation experienced by the audiovisual sector, the emergence of an European independent production sector remains a difficult objective to achieve. Vertical integration tends to be the norm, with more than half of the fifty foremost European television programme production companies (excluding cinematographic production) strongly tied to broadcasting companies. Though their operating receipts have grown from 6.5 billion Euros in 1997 to 10.4 billion in 2000, their margins have tended to slim down (profit margin falling from 4.4% in 1997 to 0.6% in 2000, equity return margin dropping from 27.7% in 1997 to 3.2% in 2000). This deterioration in finances has particularly affected televisual fiction production, which is now at a very similar level to cinematographic or animation production, where profit margins stagnate at more or less 0%. In addition, the crisis in the advertising market and digital clusters risk further affecting production companies and playing into America's hands.

Even though it is difficult to evaluate the implementation of the "cultural exception" throughout the European Union, several trends have emerged: a national and identifying preference when production allows such (which legitimates quotas a little); the emergence of productions in western European countries (notably Spain); and in the extended European Union and outside Europe (which demonstrates a semi-failure in the American policy of dissuasion), the privileged position of cinema in relation to audiovisual (which reflects the preoccupations of the "cultural exception"). The French standpoint on "cultural exception" is maintaining itself, including in its aim to protect world cinema: French financing of foreign films has no requirements as to language and creative control is left to the directors (David Lynch, Pedro Almodovar, etc), contrary to the Americans who cut a protectionist figure without however protecting their artists. But the French relative disregard for the audiovisual sector, which is nonetheless a strong financial backer and broadcasting vector, raises worrying questions as to the defence of diversity and pluralism in France, as in Europe.

Nevertheless the drop in American or English film importation in correlation with a certain rise in co productions with Hollywood could announce a long-term trend: a thin veneer of diversity to disguise a subtler or more surreptitious homogenisation project. If action films are heavyweights of the mass international market, whatever the country of origin, other films must target more specific audiences, by niche or nationality. It is in this double market that France and Europe wish more share, with compromises that could signal stylistic, rhythmic and narrative choices inspired from American formulas. International cooperation finds few alternative strategies to the United States, targeted because of the richness and depth of its market. The weakness in the European or French approach may be pinned on the cumbersome multiple or plural agreements (European projects requiring the collaboration of at least three countries). The poverty of exchange between national cinemas, including American, when contrasted with what could take place in the 1960's-70's, between France, Italy and Germany, remains troubling.

### **3. 2. 2 The American perspective**

The United States seems to treat culture with indifference, but the reality is far from it. Contrary to popular opinion – cultivated by the Americans themselves – their country encourages a hybrid patronage between public and private support: the tax benefits associated with foundations or with donations are public aid disguised through tax relief or exemption. It was thanks to this system that independent cinema survived until the end of the 1980's (at which time tax benefits were annulled). Even in these conditions, at a federal level, the *National Endowment for the Arts* was founded in 1965, which although not financing cinema does not exclude it from aid granted (especially for art documentaries). What is more, though cultural practices for the arts don't seem steered by Federal Government, it is because politically this organ has little calling or legitimacy to do so, which is not at all the case for State bodies and local communities, which are the strongest links in American cultural identity. Financial support for cultural projects thus does exist but it is decentralised and not subject to nationally measurable systematic review. It is the municipalities (Los Angeles, New York, Denver, Philadelphia, Chicago etc) who are most active in cultural support, with

however the addition of federal aid - diffuse enough to go unnoticed, be almost invisible, especially since Hollywood tends to absorb general attention.

Ideologically, since the end of WWII, the United States has conducted a cultural war on two fronts: broadcasting of symbolic propaganda through media fiction; the information revolution as contemporary myth of total independence, according to which history stands still, there being no more tie between the world of labour and that of capital. Inoffensive expressions such as "free flow of information" or "freedom of the press" are in fact code words which express the vital importance for Americans of exporting their cultural products (Schiller). Since 1946, under the aegis of William Benton (under-Secretary of State), America seeks to nourish the expansion of its press agencies, its films and its means of communication, just so many more strategic tools in its foreign policy. Material assistance to numerous countries after the war helped American implantation on the terrain, at just the time that Europe withdrew from its colonies. This implantation has been reinforced by the establishment of the powerful international organs that direct globalisation: the United Nations, the International Monetary Fund, NATO, and GATT. These organs have universal aims but can also be utilised in propagating American interests whilst serving certain national interests, little inclined to turn against the USA, who supplies current and cultural commodities at a lesser cost (Joffe).

In consequence, the Federal Government has been highly interventionist in the media and information sectors, as illustrated by the stated policy of construction and launch of communication and surveillance satellites. Entertainment industries are part of the American political economy, and the commercial argument subjacent to their rejection of the "cultural exception" must be analysed with regard to the enormous American trade deficit: cinema is the second highest export (after arms) and constitutes a sensitive point, for both Republicans and Democrats. To avoid revenue based on taxation, development of outside trade remains politically and financially the least onerous solution for America. It's a question of maintaining levels of employment and the national standard of living (including financing of defence strategies, during cold war times and the current new cold war on terrorism). If capital seems to change hands and country through multinationals, products conti-

nue to conform strictly to American norms. The perceived risk of losing economic hegemony embodied by South-East Asia creates a menace that can only be countermanded by a symbolic acculturation through audiovisual products and by a policy of dissuasion from any temptation insofar as concerns adoption of a doctrine of "cultural exception".

The United States has also anticipated technological developments to come, in order to maintain hegemonic ambitions. Enormous financial aids have been granted by the Federal Government (Pentagon and NASA) for research and development in the sphere of information technology and digitalisation, the basis for the evolving service society. In a certain respect, America has also "excepted" information and communication in accordance with its own specific interpretation of cultural exception as a form of choice, predestination, and accomplishment of a universal destiny. This allows them to break with the past and objectify very real relationships of dependence (Frau-Meigs 2003b). Without denying information technology's society transforming ability, one should not however forget the cultural continuities induced in its use. Thus Joseph S. Nye, under-Secretary of Defence in Clinton's administration, considers that the USA is well positioned for world domination in the twenty-first century because it controls hard and soft resources, thanks to information (Nye; Nye and Owens).

The Federal Government places telecommunications and new technology in its historic domination, surveillance and control structures, irrespective of the political orientation of the party in power. It was thus during Clinton's administration that the crisis with respect to "cultural exception" took place, and it was during his term of office that the 1996 telecommunications act was voted in. The act aimed to facilitate convergence between media and information technology corporations, to favour international competition. Anti-trust laws were lifted for the cable and telephony sector; compartmentalisation between production and distribution was annulled in order to further extend competition; market interpenetration was authorised, etc. Its most recent repercussions have been the convergence between multinationals and control of the entire entertainment chain (production, directing, development, distribution, exportation...) by five big groups: AOL-Time Warner, Disney, Microsoft, General Electric and Westinghouse (Miller; Frau-Meigs 2001).

The collapse of dot.coms, despite the shockwaves, will surely aid in consolidation and reinforcement of the sector. It is this perhaps that explains the new free-trader attitude, in particular Jack Valenti, who is treading a softer line on "cultural exception", saying that he is no longer opposed to subventions nor the "Television without frontiers" European directive. The free-traders feel that Internet expansion in Europe will render the quota system completely obsolete: Europeans, including the French, won't need to go to the cinema to see their films; they'll be available and downloadable on specialised sites and most of them will be American. The general feeling is that the days of "cultural exception" are numbered.

The expansion of new technology leaves open a risk that legal measures, of which the less strict "Television without frontiers" directive is the only one in place, become inapplicable. The legal void left around "cultural exception" is perhaps just a breathing space. American retaliation measures exist, but America prefers to duck "cultural exception", in particular by the increase in transatlantic co productions. Above all the United States has no interest in appearing the villain of the story. As for Europeans they try to invest in American co productions (as in the case of Vivendi-Universal), to gain control of the distribution networks, to work at their marketing strategy and at their derived markets, with various levels of success.

#### **4. Proposals for the future: towards a positive and constructive vision**

Without underestimating Internet's potential development, and possible technological and economic consequences, exceptionists can consider several strategies in order to preserve cultural diversity. Such strategies necessitate a common front from all those defending diversity in Europe and in the other regions of the world, maintenance of dialogue with the United States and deep reaching thought as to the sense of screen culture in globalisation.

Nevertheless the first battle is internal, consisting in an uncompromising departure from the conservative and protectionist reflexes that translate the idea of "cultural exception" into exceptional culture. But neither should one fall into the trap of a more or less fatalistic glorification of a

perfect free-trade. This implies a conception of identity which does not stir up nationalist isolationistic sentiments but which inspires an awareness and realisation of the richness of untapped and exploratory contemporary culture.

The political shortfall and crisis of identity affecting European countries, has spilt a lot of ink (Laidi). Analysis often fails to take into account the role of television and film screens, which are an integral part of individual socialisation. From this stems the fact that American films and programmes generate expectations and examples whose impact is badly measured by European creative artists and policies; these expectations and examples go unfulfilled by normal national productions because they imply more circulation between high and low level culture and more democratisation of access and content (Frau-Meigs 2003a). The paradox with which we have to learn to live, is that cinema and audiovisual are vectors of both identification and globalisation, creating identity and levelling cultural differences. The real issue in this context is thus content pluralism, the struggle against a potential homogenisation of formats and formulas. But this pluralism cannot be cantoned in a cultural sphere isolated from the rest, because that would be to condemn it to a disengagement from reality, from changes and developments in contemporary culture and from the creative spark inherent in each artist.

If culture is, as is often said, the ambassador for a country, it has to know how to plead its own diplomatic cause. Image projection becomes essential in this game of influence where negotiation replaces confrontation. It could consist in valuing zones of interstice in transversal networks where individuals have multiple affiliations (to their region, their Nation State, their Federal State), a situation which already occurs in day to day life without the slightest involvement by administrative organs. These are zones of common public good, which one could call "Temporary Shared Appurtenance Zones" to slightly twist Hakim Bey's expression which conceives of virtual networks as "Temporary Autonomous Zones". This could imply closer cooperation with Great Britain and reliance on countries whose audiovisual culture is in development, such as Spain or Italy. Cinematic co productions such as those between Canal+ and Pedro Almodovar can thus serve as cultural cement between two countries whose past relations have been

strained. This is the symbolic price for democratic maturity of the European Union (and its political credibility). The "cultural exception" from this point of view is tax free, price free, and audience level free.

The welding of a common front supposes that the European Union can show its cohesion and adopt a credible regional and reticular vision which legitimates its cultural actions and sweep clean its current birth pains. This in no way excludes a progressive opening of national markets, in parallel with the development of national works. Transnational growth factors exist throughout Europe and beyond; cinema cannot escape being caught up by this development and may be federative, even a boiling-pot of European cultural values, produce a certain type of universality, without having to aim for global hegemony. Conciliating diversity and accessibility to all could have the advantage of making European productions more exportable generally, whilst acknowledging that any brutality in this respect could prove counterproductive. The fruits of measures taken under a policy of "cultural exception" should carry over several generations, that of the current decision makers – grown up on American programmes – as well as younger generations – as impregnated as their seniors – who are supposed to produce the citizens and creative artists of tomorrow. American audiovisual acculturation has been produced over a half century, one cannot then expect it to be corrected in a decade (Frau-Meigs 2003a).

Generalisation of standardised practices and cultural and technical consumer habits cannot however be confused with a universal purpose where differences can be asserted without being exclusive. "Cultural exception" in this light is not exclusive, it participates in the change and growth of globalisation, whilst trying to modify certain characteristics presented as a fatality. To a certain extent it halts governmental disengagement in a process which, despite sundry interests, is a fact for countries all over the world. France in this respect could not have imposed a "cultural exception" without the European Union and the model which emerges is indeed that of regional groupings with points of resistance and convergence in mutual tension.

Another significant step towards growth would be to convince the United States of the need for real multilateral aperture, including in the American market. The United States cannot rely upon their hegemonic status for too long

without risking the creation of political, strategic and military resistance not incurred by the end of the cold war. America's policy, privileging bilateralism, inciting competitors to cede to its conceptions of reciprocity, may be perceived as being too aggressive and incite other countries to adopt similar measures or reinforce those that exist already. The risk of an unwinding in political strength is real, as would suggest the recent events of September 11. An argument capable of addressing the United States must show that if America has gained from its "exception" the least would be to respect other countries' similar rights. A universal culture cannot be constructed without dialogue between specific cultures; differentiation is not just French, it is Italian, German, Catalan ... and even American. In fact, America has lost some of its most specific genres in globalising its media: westerns, slapstick, and musicals.

In terms of cultural policies the argument for exception should be turned against the United States: by its unique conception of patronage, what is in fact an exception is taken for a norm. At the international level, a Goliath, strong as may be, cannot beat everyone. The norm of international respect should be given effect with more equality between countries, in good governance. Especially in a context which poses the question of anti-Americanism with greater insistence, where the new cold war which is terrorism cannot be ignored. In 1993 America could take the "cultural exception" as a French or European anti-Americanism. Since 2001, a closer relationship between the European Union and the United States in terms of defence and democratic culture has been a necessity, with the Atlantic area as shared appurtenance zone. European resistance, and French resistance, is contextualised within alliances negotiated with the United States, even if the American temptation is to reply to the diplomacy of alliance with that of its own interests.

France doesn't lack reasons for reticence. Its centralist and voluntarist tradition of state sovereignty in the cultural sphere is in contradiction with governance and globalisation, which weaken France's position by giving more weight to players in the private sector and individualising initiatives (Meunier). Consecration of the American vision of universalism and the triumph of pragmatism and utilitarianism can only encourage France in refusing to give way to a system of political values misaligned with its political

philosophy. European integration and the creation of a common front can thus be viewed as a means of resistance, if France succeeds in convincing Europe to champion a model of governance which respects differences. It could then oppose the real multilateral character of the European Union to the consummate unilateral character of the United States. This is why France has held itself forward as a third voice, in international relations, and tends to position itself as leader of the opposition to hyper liberal globalisation. France has taken up the role of advocate not only for itself, but for developing countries and countries in transition.

Extension of the "cultural exception" to other regions in the world would constitute the most adept strategy for those who seek to preserve cultural diversity. The 1993 crisis soon excluded disfavoured countries from the debate, revealing to what point the question of "cultural exception" was not at all global but western. However, the French message begins to be well received outside the West: in Japan, Brazil, Morocco, and in Korea particularly. These countries present similar configurations: not opposed to the benefits of globalisation, but refusing that it detriment their own internal cohesion, cultural production or language. An awareness programme needs to be undertaken with respect to those countries not convinced of the need to preserve their cultural and media diversity, or who do not have the means to do so. Problems of development in the regions of Africa, Latin America, and Asia, establish different realities in cultural politics, risking encouraging such Member States to bypass GATT rules, which could prompt the USA to resort to aggressive bilateralism.

The French and European experience can serve as example for these other regions, and indeed the lessons learnt in 1993 have conducted France and Canada to take initiatives to concretise international cooperation in cultural industries. This implies tighter exchange between governments in diverse regions of the world, through existing bonds, such as the more than fifty Francophone countries for instance. Resulting budget lines should then be dedicated to co production and international distribution. Encouragement should be given to cinema and television projects, favouring co productions and alternative distribution networks.

Petitioned by France and Canada, UNESCO, whose vocation is the support of culture in all five continents, has

taken up the question of cultural diversity. In 2001, it produced a *Universal Declaration on Cultural Diversity*, which embodies concerns that globalisation result in homogenisation of artistic and cultural services, and the right for all cultures to have access to their own means of expression and distribution, including the most modern techniques such as digital networks. The foreword mentions that market forces are not enough to guarantee diversity and recognises that Nations have the right to define a cultural policy, and promote public broadcasting services. The return of the United States to UNESCO, announced in September 2002, risks reframing this declaration, unless America can be persuaded by the rhetoric of alliances ...

UNESCO, in particular through its *Information for All* programme, also has the remit of analysing application of the "cultural exception" to cyberspace. A *Draft recommendation on the promotion and use of multilingualism and universal access to cyberspace*, is being prepared, which includes the preservation of a global public domain and takes account of the impact of new technology on developing countries. The key is to attach industries and cultural policies to notions of "global common public good" and "global general interest" (Quéau). This implies preserving the public domain of media and communication, when it eventually goes digital, with a renewed state responsibility, not as controller, but rather as guarantor of diversity and pluralism of viewpoints and artistic creation.

The WTO started a new round in November 2001. The Doha round, inaugurated in the capital of Qatar, re-examines the question of audiovisual and cinematographic services. Relative degrees of free-trade and protectionism will once again be debated; the rules of the game mutually acceptable for all once again creating tension. Will Nation States be able to conclude the birth of a common public good that transcends national frontiers? Will they be able to make diversity their exception ?

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