

Digital is different

How Australian Audiovisual Services Were Transformed  
From Culture into Commerce

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## Issues

- Cultural exceptions and cultural protection
- Trade in services and domestic regulation
- Reduction in the scope of domestic regulation:
  - Ministerial determination on audiovisual services delivered using the “Internet”
  - The USA says that “digital is different”
  - The Australia – USA Free Trade Agreement
  - Australia rejects UNESCO’s cultural exception
- Digital is different – why the Australian government’s policy has shifted

## Cultural exceptions and cultural protection

- The original call for a “cultural exception” for trade in other cultural services was made by France during the pre-WTO negotiations on the GATS
- Delacroix describes the French position as:
  - France has special interest because it has adopted the most active and most vocal policy of cultural protectionism
- Francois Mitterrand declared:
  - Culture is synonymous with the soul of a nation and the memory of its people, not a good to be bought and sold

## Cultural exception

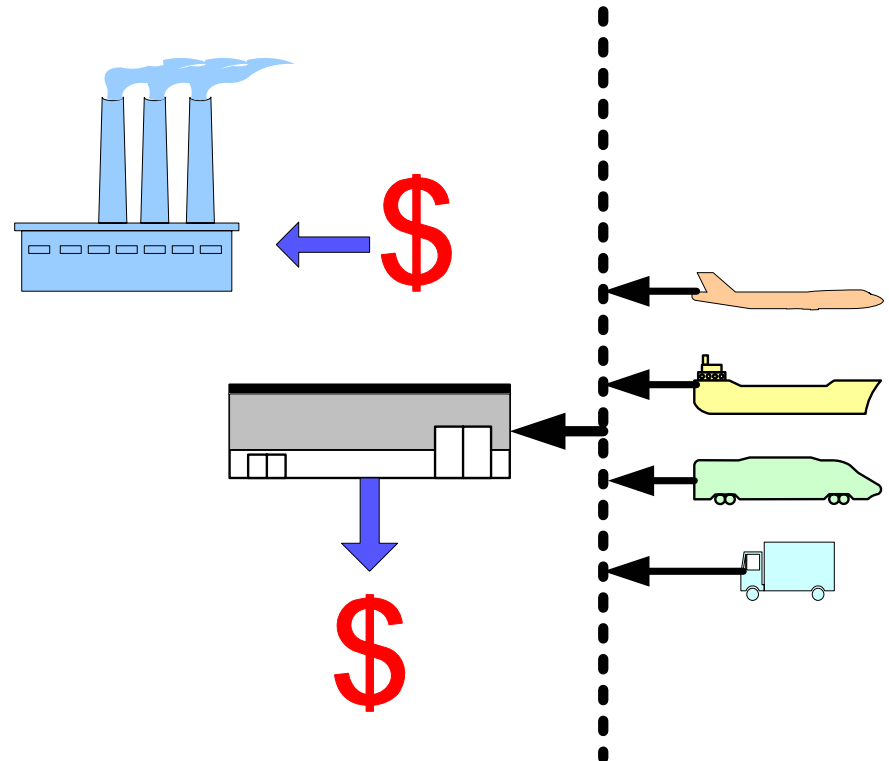
- Cultural exception is widely practised – 58 WTO members that have made commitments in one or more cultural sub-sector another 82 members have made no commitments in any of these sectors (normal commitment is for live music)
- Only 4 countries (including the USA) have made commitments in all sub-sectors
- Audiovisual services are normally not committed

## Audiovisual services

- Motion picture and video tape production and distribution services
- Motion picture projection service
- Radio and television services
- Radio and television transmission services
- Sound recording
- Other audiovisual services

## Trade in services and domestic regulation

- Not as easy as trade in goods (right) where goods can be counted, duty applied and non-tariff barriers imposed
- Delivery and use of services are regulated within a state
- Four modes of trade in services
  - state to state
  - to a consumer from one state in the territory of another state
  - Local presence through FDI
  - natural persons



**In Australia, all commercial free-to-air television licensees must broadcast an annual minimum transmission quota of 55 per cent Australian programming and 80% Australian produced advertising time between 6am and midnight plus specific minimum annual sub-quotas for Australian (adult) drama, documentary and children's programs. Pay TV drama channels must spend 10 per cent of their total program expenditure on new eligible (Australian and New Zealand) drama programs.**

**If you own, control or are a director of a commercial television broadcasting licensee then you may not own, control or be a director of:**

- a commercial radio broadcasting licensee in the same licence area; or**
- a newspaper associated with the licence area of such a licensee; or**
- another commercial television licence in the same licence area.**

**A person must not be in a position to exercise control of commercial television licences whose total licence area population exceeds 75 per cent of the population of Australia.**

**A foreign person must not be in a position to exercise control of a commercial television licence; two or more foreign persons must not have company interests in a commercial television licence exceeding 20 per cent; and not more than 20 per cent of the directors of a commercial television licensee may be foreign persons. Foreign ownership (but not control) restrictions apply to subscription television broadcasting licences**

## Reduction in the scope of domestic regulation:

- Ministerial determination on audiovisual services delivered using the “Internet”
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## Ministerial determination on audiovisual services delivered using the “Internet”

- On 12 September 2000, Richard Alston determined that the following class of services does not fall within the definition of a broadcasting service:  
**a service that makes available television programs or radio programs using the Internet, other than a service that delivers television programs or radio programs using the broadcasting services bands**

## The USA says that “digital is different”

- The “new” audiovisual sector (S/CSS/W/21 18 December 2000):
  - The audiovisual sector in 2000 is significantly different from the Uruguay Round period
  - New technologies have given consumers worldwide access to a multitude of entertainment and information services and have stimulated the growth and development of audiovisual services and products from around the globe.
  - The audiovisual sector today includes an international array of content producers and program packagers utilizing not just traditional single channel broadcasting, but new media

## Australia - USA Free Trade Agreement, Government view

- These commitments essentially mean that Australia will maintain an open audiovisual market, while preserving a modest range of possible policy interventions to ensure that Australian audiences have access to Australian voices
- The outcome provides benefits to the US, in the form of guarantees that Australia will not become a market that is closed to foreign audiovisual material
- Claims it safeguards Australia's right to intervene in response to new developments in media platforms, including the right to introduce new local content requirements

## The Australia – USA Free Trade Agreement

- The AUSFTA outcome involves a different approach to that included in the outcome to the SAFTA
- The AUSFTA reservation does not include the broad reservation to adopt measures in relation to cultural industries that was included in SAFTA

## The ABA recognised the implications

- The main channel is included as one of the two or three regulated channels. In practice it is likely that only the main service and one other could be subject to Australian content requirements (Senate submission)
- ABA optimistic on interpretation that sub-quotas may be applied within the 55% quota in a manner consistent with existing standards

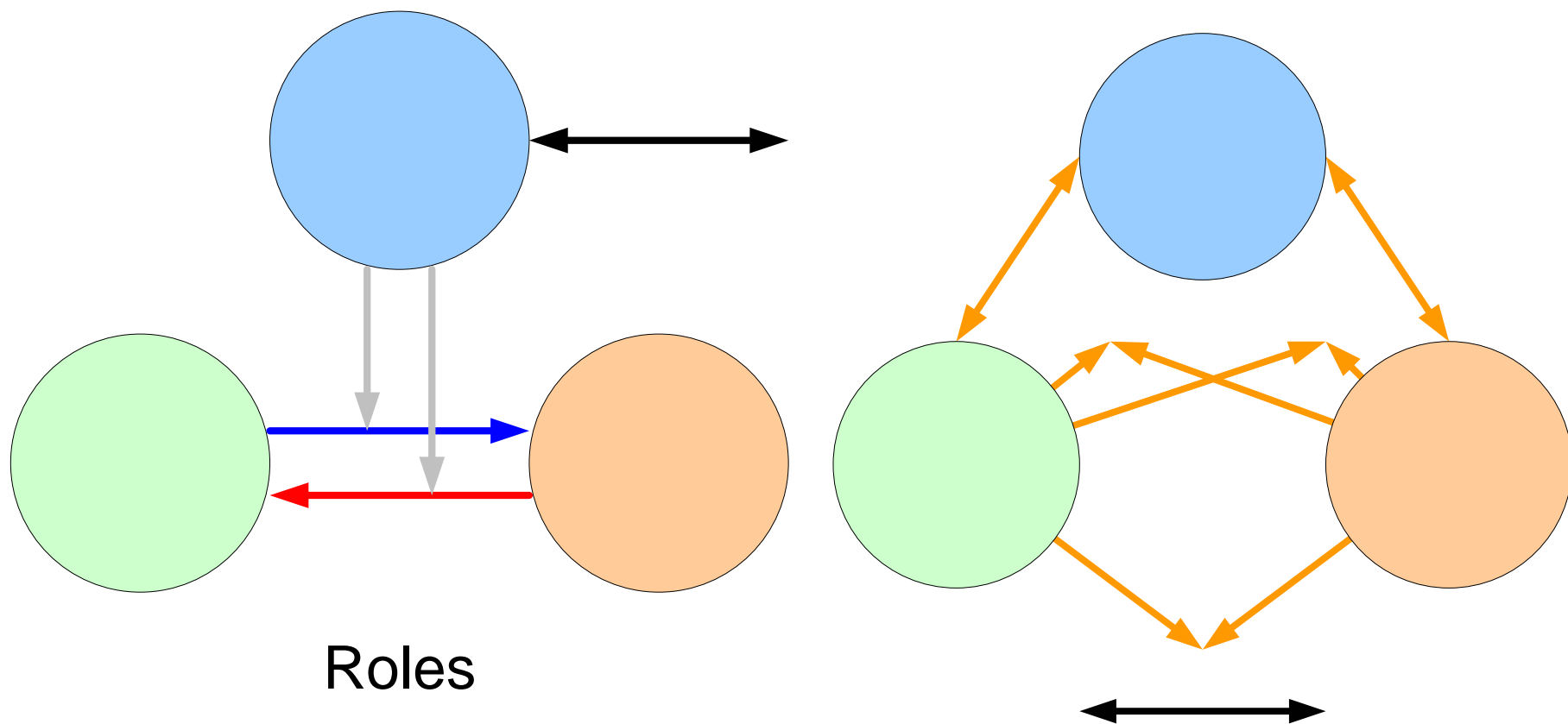
## Australia rejects UNESCO's cultural exception

- In November 2005, 148 nations signed the “UNESCO Convention on the Diversity of Cultural Expressions”. This convention protects the rights of countries to continue using possible cultural exceptions to protect their own cultural industries – including the potential for cultural protectionism
- Australia, Honduras, Liberia and Nicaragua abstained
- Israel and the United States voted against

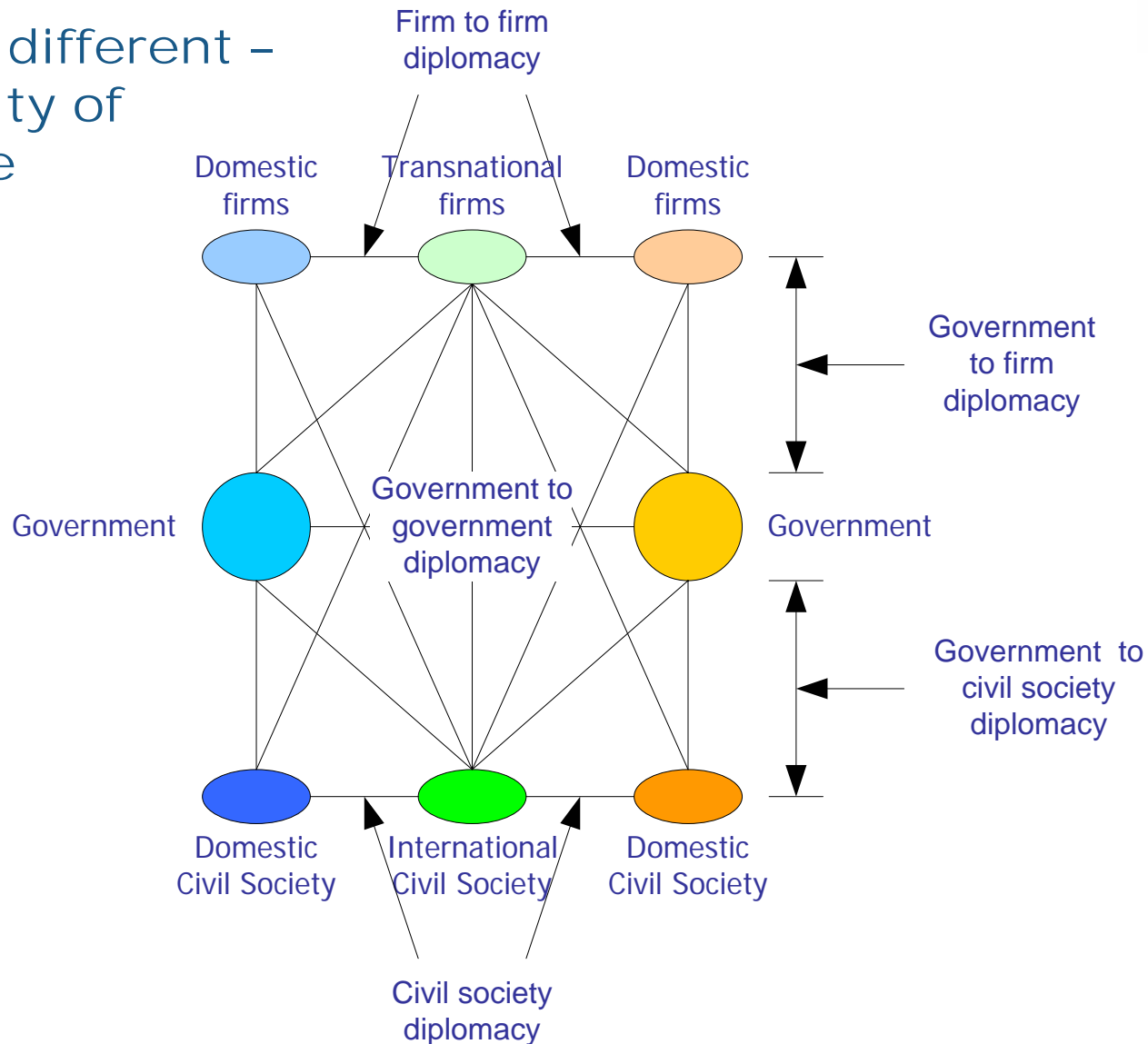
## China FTA – consistency of policy?

- Common policy position of China, USA, Japan, Mexico and Hong Kong (TN/S/W/49 30 June 2005):
  - Audiovisual services, like all services under the GATS, are an integral part of the services negotiations
  - We express great concern over efforts by some key participants in the negotiations to create an a priori exclusion for such an important sector
  - We urge all Members to consider carefully the broad economic benefits from including audiovisual commitments in their offers

# Digital is different – why the Australian government’s policy has shifted



# Digital is different – Complexity of discourse



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