CANADA-UNITED STATES FREE TRADE AND CANADIAN CULTURAL SOVEREIGNTY

VOLUME I

by

Duncan Cornell Card,
B.A., LL.B., LL.M

December, 1987

Series on Trade in Services

Comments are welcomed and should be addressed to: Series on Trade in Services, 3771 Haro Road, Victoria, British Columbia, V8P 5C3.

Working Papers on Trade in Services are circulated to elicit constructive discussion. Copies are available upon request at $5.00 each and can be ordered from:

The Institute for Research on Public Policy
3771 Haro Road
Victoria, British Columbia
V8P 5C3

CANADA-UNITED STATES

FREE TRADE

AND

CANADIAN CULTURAL

SOVEREIGNTY

VOLUME I

by

Duncan Cornell Card,
B.A., LL.B., LL.M *

December, 1987

This paper is one of a series of discussion papers on trade in services. Research in this series is supported by a grant from the Department of Regional Industrial Expansion (DRIE), Government of Canada. Views expressed in the paper are those of the author alone, and are not necessarily those of the Institute for Research on Public Policy, DRIE or the Centre for International Studies.

* Centre for International Studies, University of Ontario
Member of Ontario and Bermuda Bars.

DEDICATION

I lovingly dedicate this thesis to Rebecca Brooks Cornell Pringle, and to Becky's grand-daughter Margaret Rebecca Cameron Card, and to Molly's grand-daughter Baillie Rebecca Porteous Card.

Abstract

The 1986-87 negotiations between Canada and the United States to forge a free-trade agreement has aroused the ire of both Canada's vocal and heavily protected entertainment and media industry, and cultural nationalists that advocate the protection of Canada's unique cultural identity.

The Canadian government has taken the position that although its cultural sovereignty and its ability to promote culturally relevant enterprise is not negotiable, culturally irrelevant and inefficient trade protections that economically benefit Canada's entertainment and media industries may be discussed at the bargaining table. The protection of Canada's unique national identity within the context of a free-trade agreement with the United States demands the elimination of culturally irrelevant trade protections while preserving and enhancing Canada's sovereign right to directly encourage cultural contributions.

This thesis contends that general principles of international trade law and experience consistently provide for the protection of national cultures within the context of free-trade arrangements. However, such principles of application prohibit the application of indirect and inefficient trade protections that economically support cultural industries without resulting contributions to that nation's unique cultural identity. Rather, international trade precedent makes it clear that only the non-discriminatory application of direct and effective cultural policy implements will be tolerated within a free-trade arrangement. Purportedly "cultural trade protections" that provide direct industrial protection and only indirect ("trickle-down") cultural benefits are regarded by international legal precedent as disguised and intended economic trade protection, and not tolerated where more direct and effective cultural policies can be realized without such industry protection. Because each nation's cultural policies and implementation strategies may be infinite in their nature and design, it is least preferable to have arbitors of when

a free-trade agreement is contravened rely on inflexible and detailed criteria in the text of such an agreement describing when a particular cultural policy program offends that agreement. Rather, this thesis contends that the preferred guidance to be offered to an adjudicating tribunal are the general principles of analysis described herein and that may be included in the Preamble of such an agreement or treaty to specify a framework within which arbitors may assess each set of facts on a case by case basis in accordance with consistent and stated factors of consideration.

The Preamble advanced at the conclusion of this thesis relies on the body of international trade law reviewed herein to provide a preliminary framework of analysis within which general principles may be flexibly applied to decide when a particular "cultural" policy implement offends a nation's free-trade obligations.

ACKNOWLEDGEMENTS

I wish to thank Professor Dr. William C. Graham, Q.C. for his enthusiastic encouragement and support for my research, and for his valuable comments concerning of my thesis drafts and support papers.

I also wish to acknowledge the support and assistance of the Centre for International Studies, Trinity College, University of Toronto, and the Institute For Research On Public Policy, Ottawa.

Much of the research for this thesis would have been impossible without the access to various government documents and interviews granted to me by the Canadian Trade Negotiations Office, External Affairs Canada, and the Department of Communications. In particular, I wish to thank Johnathon Fried, Paul Dubois, Jim Wall and Robin Jackson for their kind assistance and support.

I also wish to thank Geraldine Naunheimer very much for her unfailing patience and tremendous skill in proof-reading and typing the drafts and final version of this thesis.

CONTENTS

Volume 1

CONTENTS

Volume 2*

* Volume 2 is available upon request at a cost of $5.00 each and can be ordered from:

The Institute for Research on Public Policy
3771 Haro Road
Victoria, British Columbia
V8P 5C3

CHAPTER I

INTRODUCTION

"The mountain in the Paramount
logo fades into a purple mountain
of Peru as the renegade archae-
ologist and adventurer, Indiana
Jones, leads a gang ... through
the underbrush in pursuit of ancient
Incan treasure. Surrounded by the
natives' [crouching] figures, Indy
is ... the imperial white explorer
... the world's his oyster. An
argument ensues, Indy flicks his whip ..."

Raiders of the Lost Ark, cited
Rolling Stone, Movie Reviews1

The power and influence of the United States economy over Canada is formidable. In 1985, protectionist measures affected almost $6 billion of Canadian exports to the United States,2 including steel, copper, sugar, asbestos, raspberries, rock salt, salt cod, hogs, and softwood lumber exports. In that year, United States trade impediments put almost 146,000 Canadian jobs at risk.3 If the United States were to impose across-the-board trade restrictions as a means of reducing its trade deficit of approximately $125 billion,4 the effect on Canadian employment could be dramatic. Canada and the United States, at $155 billion Canadian, have the largest two-way trade in the world. The United States absorbs three quarters of virtually everything that Canadians export. On the other side of the ledger, Canada buys more than 22% of all American exports. Japan, by contrast, absorbed less than half that much in U.S. exports in 1985, while all of the countries of the European Economic Community took just under 21.5 % of American exports in the same year. Canada not only ranks first among the U.S.A.'s trading partners in terms of total exports, but it is also the fastest growing market for American exports in recent years. Since

1982, for example, total American exports have grown by only 1%. Exports to Japan were up by 7% and exports to the EEC were down by 3%. American exports to Canada rose by over 40% in the same period.5 The federal government of Canada estimates that a 10% reduction of our exports alone could cause up to 250,000 Canadian jobs to be eliminated.6 The principal concerns fuelling any trade negotiations with the United States are the protection of Canadian jobs and the creation of new jobs by increasing Canada's access to the relatively large United States market.7

On November 5th, 1982 the federal government established The Royal Commission on the Economic Union and Development Prospects for Canada8 (the "Royal Commission") to investigate and report on the long-term economic potential, prospects and challenges facing Canada with a view to recommending "appropriate national goals and policies for economic development."9 The Royal Commission solicited and sponsored a wide range of studies in support of its research mandate. One study was commissioned on the topic of Canada-United States free trade, which has been published as Vol. 1110 in the Royal Commission's research series. Based upon various research projects undertaken for that study and upon its wider investigations, the Royal Commission recommended that the federal government "open negotiations with the Government of the United States to reach an agreement on a substantial reduction of barriers, tariff and non-tariff, between Canada and the United States"11 toward the formation of a free trade relationship.

The Royal Commission submitted its report to the federal government early in 1985, and on March 18, 1985, the Prime Minister of Canada and the President of the United States signed the "Declaration Regarding Trade In Goods And Services" at Quebec City (the "Quebec Declaration").12 The Quebec Declaration charged Ambassador Brock, the United States Trade Representative, and the Canadian Minister for International Trade (then the Honorable James Kelleher) to establish a "bilateral mechanism" to reduce and eliminate existing barriers to trade between the two countries. The Quebec Declaration provides the following resolution in this regard:

> We believe that the challenge to our two countries is to invigorate our unique economic relationship. We intend to build on our success in resolving a number of disputes and achieve something of lasting significance to provide a model to other nations of the way in which two modern societies can work in harmony.13

However, early research undertaken for the Royal Commission14 revealed that the elimination of certain barriers to trade between the United States and Canada would have an impact on Canadian cultural industries, if not in some ways, Canadian culture. The Royal Commission adopted broad qualifications to its research studies concerning the need to protect Canadian "cultural" interests and offered the following recommendation:

> Commissioners recommended that Canada negotiate a legal arrangement with the United States which incorporates strong safeguards to limit spill-over from the arrangement and thus to protect substantive policies, such as those pertaining to culture and defense, which are <u>functionally unrelated</u> to trade in goods and services. Indeed, a policy that creates no linkage should be explicitly confirmed in order to avoid surprises if the Government of Canada, as we recommend, were to pursue a more aggressive policy of support for indigenous cultural expression as a concommittant of a bilateral trade initiative.15

The Royal Commission speaks in terms of aggressively pursuing trade liberalization while protecting substantive policies pertaining to culture -- <u>which are functionally unrelated</u> to trade in goods and services. However, the pursuit of both policy objectives creates a dilemma between protectionist and trade liberalization policies. In order to resolve this dilemma, negotiators must address which trade barriers, if any, are essential to the realization of legitimate domestic cultural policies, and which trade barriers are not essential (functionally unrelated) for cultural reasons, but act as a pretext, or disguise, for illegitimate economic protection in the name of Canadian cultural sovereignty. As this paper reveals, both sides of the negotiation table recognize the legitimate imperative of protecting Canadian culture and the danger of ignoring the distinction between economic and cultural protectionism. However, Canadian cultural industries continue to argue that the private commercial sector is the sacrosanct bastion of Canadian culture and that the economic trade protections it enjoys are not only essential for, but synonymous with, Canada's cultural identity. Under the banner of cultural nationalism, those with a vested economic interest in such trade protections, argue that there is no distinction between economic and cultural protectionism with regard to the present regime of Canadian non-tariff barriers that protect its domestic cultural industries. That argument is the basis for their demands for sectorial exemption from the free-trade negotiations.

Are all trade protections that economically benefit cultural industries relevant to Canadian culture? Which trade barriers are irrelevant to Canadian culture, if any? Are those trade protections that are culturally relevant <u>efficient</u> implements of public policy? Are those with the most profound economic interests appropriate and unbiased arbiters of which trade restrictions are culturally relevant and/or, efficient? As well, is the legitimate cause of "cultural sovereignty" being exploited by the Canadian industry to protect their economic and commercial interests irrespective of Canadian cultural interests?

As the free-trade negotiations proceed and the conflicting rhetoric of aggressive trade lobbyists becomes more adamant, there has been very little critical analysis of the cultural industry's position that all present trade restrictions are essential and appropriate implements of Canada's <u>cultural</u> policies.

The protection of Canadian culture is far too important to allow it's abuse and exploitation by economically self-interested lobbyists. The maintenance of legiti-

mate trade protections that are culturally relevant and "functionally unrelated to trade" must not be tainted by the economically biased and broad stroke of the "sectorial exemption" brush. Canada should employ the most direct and efficient methods to secure and promote Canada's cultural identity. To maintain the integrity of that venture, Canada should be sceptical of those who manipulate the cause of cultural sovereignty to achieve their own financial gain irrespective of that financial gain's relevance to Canadian culture.

This research paper critically evaluates the position of Canada's cultural industries and argues that there is a distinction between the legitimate protection of national cultural interests in trading relationships that is recognized by principles of international law and understanding, and illegitimate economic trade restrictions that are irrelevant to such cultural interests. Such a critical analysis toward the recognition of such a distinction provides the foundation for the advancement in this research paper of the principles and criteria that can be relied upon to delineate the balance between economic and cultural protections.

This research paper advances internationally recognized legal standards for the justification of cultural exclusions and exemptions from trade liberalization obligations, and proposes a draft Preamble for the Canada-U.S. free-trade agreement that incorporates the principles and criteria of exemption necessary to protect Canada's cultural interests.

It is hoped that the articulation of such principles and criteria of exemption that recognize the distinction between economic trade protection that is irrelevant to Canadian culture and national identity, and trade restrictions that are functionally related to Canadian culture will promote the protection and enhancement of Canada's unique culture in the context of international trade liberalization.

CHAPTER II

GATT BASIS OF BILATERAL TRADE LIBERALIZATION

The United States and Canada have been parties to the General Agreement on Tariffs and Trade ("GATT") since January of 1948, and it is under their respective obligations created by the GATT that the free-trade negotiations may be, and are being, undertaken. In order to understand any exclusionary criteria and the principles of exception that may apply to a Canada-U.S. free-trade arrangement, it is important to understand the substantive context within which such negotiations will be carried on.

1. Most Favoured Nation Principle

Article I of the GATT provides that trade must be conducted on the basis of "nondiscrimination" and equal treatment whereby trade advantages that are extended to one trade partner must be extended, on equal terms, to all other trade partners. Under Article I, all contracting parties must grant, to each other, treatment as favourable as they give to any other trading partner in the application and administration of import and export duties. The duty of equal trading treatment is known as the "most favoured nation" principle ("MFN").1

Although the most important MFN obligation in the GATT appears in Article I, there are other MFN non-discrimination clauses in the GATT that apply to cinematographic films (Article IV, para. (b)); internal mixing requirements (Article III, para. 7); transit of goods (Article V, para. 2, 5, 6); marks of origin (Article IX, para. 1); quantitative restrictions (Article XIII, para. 1); state trading (Article XVII, para. 1); measures to assist economic development (Article XVIII, para. 20), and measures for goods in short supply (Article XX, para. (j)). The general rule prescribed by the foregoing sections is that a contracting party should be given "no less favourable" treatment than any other contracting party.

2. Free Trade Area

Despite the existence of other exceptions to the MFN principle in the GATT, such as the 1939 Commonwealth-French colonial tariff preferences (Article I, para. 2), the balance-of-payments discrimination (Article XIV), the exchange tariff and trade preferences (by special waiver) and several special arrangements (e.g. Multifibre Arrangement), the most important and controversial exception to the MFN principle is that found in Article XXIV -- for the formation of discriminatory free-trade areas.

Article XXIV of the GATT provides for the creation of free-trade areas in the following terms:

> 1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application....
>
> 4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.
>
> 5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that: ...
> (b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be; and
> (c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

Paragraph 8 of Article XXIV provides, in part, that for the purposes of the GATT, a free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

Jackson2 has referred to Article XXIV of the GATT as "one of the most troublesome provisions of GATT". The controversy over this exception to the MFN provisions of the GATT arises because this exception cuts directly to the root of the GATT's very objective of liberalizing trade multilaterally and away from regional trade enclaves. The concern has been that free-trade areas may lead to resentment on the part of non-entitled trading partners, that in turn leads to a loss of will and commitment to international trade liberalization. As well, the fundamental objective of the GATT is to reduce bilateral trade distortions by encouraging a multilateral approach to trade liberalization. Therefore, the formation of a free-trade area is reviewable by GATT members to ensure that parties form bona fide "free-trade areas" and do not exploit the provisions of Article XXIV to deviate from their MFN obligations. Unless such deviation is accomplished within the context of a legitimate free-trade area, it will not find favour with the GATT membership. The main reporting obligations of contracting parties and the ability of the GATT membership to approve proposals that are not "free-trade" agreements under Article XXIV are as follows:

> 7. (a) Any contracting party deciding to enter into a customs union of free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or are as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(b) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(c) Any substantial change in the plan or schedule referred to in paragraph 5(c) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

10. The CONTRACTING PARTIES may be a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

3. Canada-U.S. Free-Trade Area

In addition to the Economic Council of Canada Report (1975)3 and the report by the Standing Senate Committee on Foreign Affairs (1984),4 the Royal Commission made the following recommendation to the federal government:

> Commissioners recommend that the Government of Canada, at the same time it undertakes an initiative at the multilateral level to eliminate trade barriers, open negotiations with the Government of the United States to reach agreement on a substantial reduction of barriers, tariff and non-tariff, between Canada and the United States. Such an agreement would have to stand within the terms of Article XXIV of the GATT, and it would provide for a reduction of barriers between the two countries, but would leave each country with freedom of action to maintain separate trading policies with other economic partners.5

Of particular topical interest for this paper, are the implications of exempting particular service industries, such as cultural industries, from the liberalizing effects of a free-trade agreement negotiated within the context of GATT, which does not now reach service industries. The Royal Commission made the following arguments in favour of a GATT based free-trade agreement in this regard:

> Within the framework of a general free-trade agreement, it would still be possible to exclude certain sectors or industries from the scope of bilateral negotiations. Article XXIV of the GATT has been interpreted to authorize the exclusion of up to 20 per cent of the total trade in goods among the members of a legitimate free-trade area. Moreover, since trade in services lies outside the jurisdiction of the GATT, Canada and the United States are not legally constrained to remove all barriers affecting it. There is, therefore, no legal impediment to the negotiation of a limited number of exclusions on a case-by-case basis. Several Canadian industries might, in fact, have special needs or problems that would justify their total or partial exclusion from a general free-trade regime. While Commissioners do not believe that any industry should automatically be excluded from consideration, nevertheless, we recognize that as negotiations proceed, it may prove necessary to make exceptions. Such a development would be entirely consistent with our understanding of a free-trade agreement. ... A Canada-U.S./free-trade agreement should regulate the three general types of barriers that currently restrict trade between the two nations: tariffs, contingent-protection measures, and other non-tariff barriers (NTBs).[6]

Since the Royal Commission clearly recommended that Canadian culture be protected from the dominating influences of the United States' economic power, it is very interesting to note that the Royal Commission left the door open for sectorial exemptions from free-trade negotiations. However, the Royal Commission's exclusion of cultural issues that are functionally unrelated to trade from free-trade negotiations obviously, and consistently with the proposition of this paper, does not automatically extend to the protection of Canadian cultural industries. The implicit, but clear, denial by the Royal Commission that "Canadian culture" is necessarily synonymous with "Canadian cultural industry" is contrary to the recent arguments and positions advanced by Canadian cultural industry members and various federal politicians that are discussed in Chapter V of this research paper.

CHAPTER III

MAINTAINING A COMMITMENT TO CULTURAL SOVEREIGNTY IN THE CONTEXT OF FREE-TRADE NEGOTIATIONS

"Given all these facts, as the federal Minister responsible for arts and culture, I must take an interest, a fairly concentrated interest, in the technological and industrial developments of cultural industries. But the emphasis of my interest is on the culture, not the industry. The cultural industries are totally uninteresting from a cultural point of view, if there isn't any culture in them!"

The Honorable Francis Fox, Address to the Canadian Conference of the Arts, May 7th, 1981.

1. The Canadian Government's Commitment

The intervention of the federal government of Canada into the economic affairs of its cultural industries has always been rationalized on the basis of a need to protect Canadian culture and national identity and to undertake public expenditures toward those objectives.1

Pursuant to the direction and mandate of the Quebec Declaration, the Minister for International Trade reported to the Prime Minister on September 17, 1985 on the scope and prospects for a trade liberalization agreement between the United States and Canada. In that report, the Minister adopted the Royal Commission's recommendation noted above and stated the need to protect Canada's cultural identity in the following terms:

> I see the broad objectives of such negotiations from Canada's perspective to be ... to strengthen the economic basis of our cultural objectives.... During the consultations, many within our cultural communities expressed concern about protecting our sovereignty and culture. Our cultural identity, of course, is not for negotiation. Canada has reached a plateau

of maturity which helps to define the opportunity before us. Our economic strength and cultural integrity have evolved to the point where we can enter negotiations with confidence.2

In the House of Commons on September 26th, 1985, Prime Minister Brian Mulroney stated the policy of the federal government concerning the protection of Canada's culture in the following terms:

> Our political sovereignty, our system of social programs, our commitment to fight regional disparities, our unique cultural identity, our special linguistic character -- these are not at issue in these negotiations. They will be stronger in a Canada made more confident and prosperous from a secure and dynamic trade relationship with our biggest customer and with all the world.3

Murray Campbell reported in the October 16, 1985 Globe and Mail article entitled, "U.S. Programs Increasing" that the Minister of Communications, Benoit Bouchard, "reiterated the pledge by Prime Minister Brian Mulroney that cultural issues will not be on the table when Canada negotiates free-trade with the United States."

The Prime Minister asserted federal government policy in that regard in his address to the University of Chicago on December 4, 1985 as follows:

> Our purpose (in a free trade agreement), in short, is to raise incomes, job opportunities and living standards on both sides of the border. If we and our American partners cannot strike a deal that will achieve these goals, a deal will not be struck. Our political sovereignty, our system of social programs, our commitment to fight regional disparities, our unique cultural identity, our special linguistic character -- these are the essence of Canada. They are not at issue in these negotiations. Canada is a bilingual country, in law and increasingly in practice. Our bilingual character is one of the reasons federal and provincial governments promote culture through direct financial support; it is why there are special rules regarding our cultural sector in our Investment Canada legislation. When it comes to discussing better trade rules for cultural industries, you will have to understand that what we call cultural sovereignty is as vital to our national life as political sovereignty. And how could it be otherwise living, as we do, with a country ten times our population.4

The Prime Minister then proceeded to compare the issue of cultural sovereignty to national security in the following terms:

> Canada and the United States are different sovereign democracies. In the United States, you cast the net of national security over more areas than we; in Canada, we cast the net of cultural sovereignty more widely than you.5

On November 18, 1985, in a speech to the Foreign Policy Association in New York, the Secretary of State for External Affairs, the Right Honorable Joe Clark, reiterated the cultural policies of the federal government vis a vis a free-trade arrangement in the following terms:

> Canada, like the United States, has its own distinct political, social, cultural and juridical systems ... we also want a relationship that respects and reflects Canada's distinctive character and interests.... As I told George Schultz in Calgary, 'What is incidental to you can be culture to us.' The protection of our distinct cultural identity is of singular importance to Canada.6

The Secretary of State for External Affairs reiterated these concerns in an article entitled, "Trade Negotiations and Cultural Industries" in December of 1985,7 wherein he stressed Canada's commitment not to negotiate issues of cultural sovereignty.

In his address to the International Law and Business Association at the University of Western Ontario on January 22, 1986, the Minister for International Trade (then, the Honorable James Kelleher) emphasized that Canada's "cultural sovereignty" was not threatened by free-trade with the United States as per the following excerpt from that address:

> All right, but what about our cultural sovereignty? What about our social programs? How can they survive a new trade deal with the Americans? In my opinion, they will not only survive, they will thrive as never before ... our position is this: Our cultural sovereignty is not negotiable. Our social programs are not negotiable. They are our business, and nobody else's.

On June 27, 1986 the Honorable Barbara McDougall, Minister of State, Finance made the following assertion in favour of insulating Canada's cultural interests from trade liberalization with the United States:

> ... as to the implications of freer trade with the U.S. on our cultural programs and industries, the Prime Minister has indicated on a number of occasions that our unique cultural identity is not at issue in these negotiations and that cultural sovereignty is as vital to our national life as political sovereignty. In addition, the Secretary of State for External Affairs has stated that the government's intention to promote culture in Canada through the direct financial support is also not at issue in these negotiations.8

2. Canadian Recognition of the Culture-Economics Distinction

However, federal government policy has also made it clear that cultural industries can be strengthened through trade and that "Canada's commitment to maintaining a vibrant, independent cultural identity should not stop us from seeking better trade rules for cultural industries."9 Especially significant is the clear and fundamental distinction that the federal government makes between maintaining the status quo of policies that respect the sanctity of cultural sovereignty and amendments to economic policies that will have a commercial impact on cultural industries.

In Mr. Clark's address to the Foreign Policy Association in New York on November 18, 1985, his concern for the continued protection of Canadian cultural sovereignty within the context of trade liberalization was expressed as follows:

> As we enter trade negotiations, some in Canada are extremely concerned with the effect these negotiations might have on Canadian cultural industries and therefore on our ability to express and develop our national sovereignty. I respect their concern. Two questions are at issue. One is the vitality and support of Canadian culture. The second is the negotiation of trade rules that might affect cultural industries. We distinguish between these questions. ... no country in the world is more committed than Canada, to making the rules of international commerce more transparent and fair.... In the U.S., you cast the net of 'National Security' over more areas than we. In Canada we cast the net of cultural sovereignty more widely than you..... But that commitment to cultural sovereignty should not stop us from seeking better trade rules for cultural industries. From Canada's point of view, better rules are both possible and desirable.10

Mr. Clark continued to assert the distinction between trade barriers that protect Canadian cultural identity and those that may detrimentally inhibit international trade in cultural products in the following terms:

> We are prepared to discuss with the U.S. whatever concerns it may have. We expect a similar openness on their side. No doubt, as the negotiations progress, the U.S. side will state that it cannot meet certain Canadian demands; no doubt we will do the same. This is how negotiations work.
>
> But we can make certain understandings explicit. We are prepared to discuss with the U.S. ways we can strengthen cultural industries through trade. But under no circumstances, are we prepared to agree to any measures which weaken those Canadian industries or undermine their capacity to serve our cultural needs.
>
> Canadian culture is strong and vibrant and it will grow and flourish. But I am acutely conscious that Canadian culture and the Canadian economy must grow together. Our government believes we can strengthen our cultural identity while at the same time building on our economic relationship with the U.S. That is the modern reality in Canada.11

During the Senate debate of December 4, 1985 Senator Brenda Robertson stressed the Canadian government's commitment to both negotiate industrial trade restrictions affecting the "cultural community" and protect Canadian cultural interests, as follows:

> I hope that some honorable senators are not suggesting that the cultural community must not be discussed at all in these trade talks ... (External Affairs Minister Joe Clark) stated in New York in November that our commitment to cultural sovereignty should not stop us from seeking better trade rules for cultural industries, and that from Canada's point of view better rules are both possible and desirable.12

In his article of December 15, 1985, entitled, "Trade Negotiations and Cultural Industries", Mr. Clark further developed and articulated the federal government's willingness to negotiate the elimination of trade barriers to cultural industries while remaining faithful to his government's commitment to protect Canadian cultural sovereignty as follows:

> It is virtually impossible to reach a good deal by placing the negotiators in a straightjacket of exemptions before they even sit down.... There is a relationship between this Government's desire to assist, promote and encourage the growth and vibrancy of Canadian culture both at home and abroad, and our willingness to sit down with our trading partners to work out a fairer, more predictable environment for all industries, including cultural industries. We will not be dissuaded, however, from exploring with our biggest and best customer, the benefits and opportunities trade negotiations might have to offer.... Exempting cultural industries from the negotiations at the outset will mean that the general benefits that will result from the negotiation in terms of more secure access, better rules and more predictable channels for resolving differences of view will not be available to that industry. I can see little benefit to Canada from such an approach.13

The Minister of Trade has intimated that any commercial implications caused by the removal of any trade barriers to the flow of cultural goods and services in the course of free-trade negotiations, will be outweighed by the positive effects on Canadian culture created by the wider economic benefits that a free-trade agreement would bring to Canada. Specifically, the Minister of Trade has revealed the long term economic objectives of the federal government and has taken the distinction between narrow sectorial, commercial concerns and the benefits on cultural sovereignty that flow from wider economic prosperity further in the following terms:

> Our cultural sovereignty is not negotiable.... But let one take the issue further. In this country, our cultural sovereignty ... depends on our capacity to sustain economic growth. This is directly linked to our ability to trade, because trade increases our wealth. Only a strong economy can guarantee the cultural institutions that give us our unique Canadian identity.... If our economy is weak ... our cultural sovereignty would be less resilient.... We have, in large measure, become what we are today as a result of more than 50 years negotiating agreements that have expanded our trade throughout the world. One after another, these agreements have given us the means to grow and prosper, and our prosperity has allowed us to support and foster our vibrant cultural community.... So ask not how our cultural sovereignty ... can survive freer trade with the Americans. Ask how they could survive if our trade were restricted.14

On June 9, 1986, the Rt. Honorable Brian Mulroney, Prime Minister of Canada, gave a clear indication of the federal government's recognition of the need to protect Canadian culture and national identity by ensuring that only trade restrictions that can be justified by their ability to serve Canadian cultural needs be retained. The Prime Minister revealed a distinction between the positive exposure of cultural industries to trade liberalization and protecting Canada's cultural needs as follows:

> I can assure you at the outset that, although we are prepared to discuss with the United States the ways we can strengthen our cultural industries through trade, under no circumstances will we agree to any measures that weaken those Canadian industries or undermine their capacity to serve Canadian cultural needs. I am sure you will agree, however, that a strong cultural identity and sovereignty itself must be built upon the bedrock of a sound economy. A solid economy together with a vibrant cultural community are the essential ingredients of an independent and distinctive nation. Our negotiations on trade enhancement would seek to provide the economic environment in which a vital culture can flourish.15

Cinema Canada reported that the government of Ontario fully supports the protection of Canadian cultural sovereignty and quoted David Michener's, executive assistant to the provincial Minister, assertion that, "Our one prime thrust is always cultural sovereignty and that general thread is the imperative for us."16

The Trade Negotiations Office of the federal government has also asserted the need to protect Canadian programs that promote and protect Canadian culture. Brian Milner has reported Ambassador Reisman's commitment in this regard as follows:

> Mr. Reisman expressed confidence that the United States would recognize Canada's special economic, social and cultural needs in any negotiations. He said he is convinced the U.S. side "will understand and accept the kinds of programs we need ... He also noted that "any agreement would have to avoid undermining the institutions we have created and fostered to promote the growth of Canadian culture".

The federal government's recognition of the distinction between economic and cultural trade barriers and their reliance on that distinction to chart a balanced course toward the creation of a free-trade agreement while protecting Canadian culture is revealed in Charlotte Montgomery's following report of November 6, 1985 in the Globe and Mail entitled, "Government Indicates Film, Books To Be Part Of Trade Talks With U.S.":

> Under a barrage of opposition accusations, the Government indicated yesterday that Canada's film and publishing industries will be part of coming negotiations for freer trade with the United States.... After Prime Minister Brian Mulroney quoted an old speech of his own in response to some questions, noting that he had promised that "our unique cultural identity" would not be "at issue" in trade talks. Mr. Clark offered some indication of which cultural industries might be involved.17

The corresponding Toronto Star report of the same date also described the federal government's reliance upon that distinction in the following terms:

> But External Affairs Minister Joe Clark made it clear that while Ottawa will not give up the country's cultural identity, it certainly is willing to talk about the activities of industries such as publishing and broadcasting. Clark defended the government's strategy of allowing sensitive cultural industries to be included in trade talks. He stressed that Canada's cultural sovereignty and national identity would not be sacrificed. Rather, certain Canadian cultural industries could benefit from improved access to U.S. markets now restricted by subtle trade barriers, he said.18

Perhaps the most revealing indication of the federal government's reliance upon the distinction between economic protectionism and the protection of Canadian culture was contained in a 29-page External Affairs memorandum marked "Secret", entitled "Canadian Sovereignty" and dated October 10, 1985. That document was obtained by Maclean's magazine and reported in an article entitled, "A Secret Plan For Free Trade and Sovereignty".19 In part, the document is reported to have stated that "cultural programs could be used as 'trade-offs' in the negotiations if the government can convince citizens that the Canadian identity will flourish in an economy strengthened by free trade". However, there was no indication in the memorandum that external affairs officials will compromise their position that cultural sovereignty is a policy of paramount importance. The Maclean's article made the following revelations concerning federal government strategy:

> When Mulroney made his September trade announcement, he added that "our unique cultural identity" would not be "at issue". But he did not say that he would exclude from the bargaining the panoply of federal cultural policies which include laws to protect Canadian magazine publishers and television stations, as well as measures to promote increased Canadian ownership in book publishing. And the external affairs memorandum said that in order for trade negotiations with the United States to succeed, "we may need to make trade-offs between different policy objectives." ... it added that there is a contrasting conviction that "the need for restrictive measures is not proven, and insistence on exemptions for cultural institutions could prejudice the successful conclusion of the Canada-U.S.A. trade negotiations on which the health of the economy as a whole -- and hence of cultural industries -- depends." As well, it said, "a good deal could be accomplished packaging existing policies to play up their sovereignty dimensions and through drawing attention to international events where Canada can be seen as an important and independent player."

Perhaps the clearest example of the Canadian government's recognition of the distinction between trade barriers that are culturally irrelevant and those that functionally protect Canadian culture was reported by Charlotte Montgomery in her

Globe & Mail article entitled, "Government Indicates Film, Books, To Be Part Of Trade Talks With U.S.". The following excerpt from that report reveals such a distinction:

> Pressed repeatedly for details, the minister said that cultural institutions (such as the CBC, the National Ballet and the Neptune Theatre) would not be involved. He was then asked if CRTC regulations, broadcasting ownership rules and advertising regulations would be involved. "The institutions of cultural expression in Canada, and the regulations which guide and often inspire those institutions, are part of the exercise of Canadian cultural sovereignty" and will not be touched, he replied.20

The federal government recognizes the essential need to distinguish the cultural and the economic interests of Canadians toward the most efficient negotiation of a free-trade agreement with the United States.21 The next Chapters of this research paper will discuss both the reluctance of cultural industries to recognize the distinction between legitimate domestic cultural policies and illegitimate economic trade protectionism.

CHAPTER IV

THE INDUSTRY POSITION: ECONOMIC PROTECTION IS CULTURAL PROTECTION

Canada's artistic and cultural leaders have pleaded with the federal government not to sell out cultural sovereignty in trade talks with the United States ... 25 high-powered spokesmen made their case for special protection for Canada's cultural industries ... lest the Americans wrestle damaging concessions from Canadian negotiators ... the concerns expressed (by industry representatives) that once cultural industries are on the table, it is difficult to distinguish between strictly commercial questions and matters of 'cultural sovereignty'.

"Don't Sell Out Cultural Rights In Trade Talks" - Toronto Star, November 27th, 1985, page A1

1. The Canadian Cultural Industry Lobby

A recognition of the distinction between strictly commercial trade restrictions and trade protections that secure the integrity of cultural sovereignty is contrary to the interests of Canadian owners of film and video production and distribution facilities. Their economic interests are best served by the assumption that "Canadian cultural industry" is synonymous with "Canadian culture" and that, therefore, trade protections against encroachments on Canadian culture may take the form of trade barriers that protect the economic interests of the Canadian industry. By arguing that Canadian industry is the bastion and guardian of Canadian culture, such a distinction becomes irrelevant, and any derogation of industry trade protection can be resisted, not under the banner of economic self-interest, but under the less conspicuously selfish banner of "cultural nationalism". Indeed, the banner of cultural nationalism is an important and legitimate banner, but is it being exploited by Canadian industry to protect their economic interests through the maintenance of trade restrictions that are irrelevant to Canadian culture?

Industry interests quickly recognized the potential economic harm that such a distinction may cause to their industry, and they organized to lobby the federal government to exempt cultural industries from the trade negotiations. On Thursday, December 19th, 1985, the Toronto Star reported that an extremely influential lobby group of industry executives had been formed to convince the federal government to exempt cultural industries from the bargaining table. That group was reported to include John Bassett, Chairman of Baton Broadcasting; Pierre Juneau, President of the CBC; Paul Desmarais, President of Power Corporation; Donald Campbell, Chairman of MacLean Hunter; Harold Greenberg, Chairman of Astral, Bellevue, Pathe; Stephen Roth, President of Alliance Entertainment Corporation; Paul Wilson, Vice President of Southam; and Phillipe de Gaspe Beaubien, President of Telemedia. In the following excerpt of that report, the Toronto Star described this lobby group:

> Protecting Canada's cultural industries from impending free trade talks with the United States has created a coalition of unusual bedfellows. A high-profile strategy group has been formed and $100,000 contributed by its members to influence the federal government to keep cultural industries (film distribution, TV tariffs, recordings and book publishing) off the bargaining table.... And the members also plan to make their views known in the United States, where many of them have wide and influential connections.

The objective of members of that lobby group to both equate industry interests with cultural interests, and to exempt the Canadian industry from the trade talks has been reported in the following terms by David Crane:

> "I simply can't imagine any government giving away on these issues", says John Bassett, a long-time Tory and chairman of Baton Broadcasting, which owns Toronto's CFTO TV station and Glen Warren Productions, a major producer of TV programs.
> "It's so fundamental to Canadian identity and our sovereignty would be threatened", adds Bassett, who is also a member of a group of Canada's top cultural companies who are trying to persuade Ottawa to keep culture out of the trade talks altogether.1

Similarly, Ronald Osborne -- CEO of MacLean Hunter, has "called on Canadian authorities not to bargain away cultural industries in any free trade talks."2 On April 4, 1987, Edward Greenspon, in his article entitled, "What's Really At Stake", points out that the concerns of cultural industries are primarily economic and that the argument that the economics and Canadian culture are "inextricably" interwoven promotes the economic needs of that industry as follows:

> But nationalists and the alliance of workers and owners in the field argue that culture and industry are inextricably linked, because private interests produce most domestic films, television programs, books, magazines and records. The question of whose pockets are being lined should not obscure the larger issue of promoting the national interest, said Abraham Rotstein, a University of Toronto economist with a long history in nationalist circles. That sort of attitude goes down well with John Bassett, chairman of the executive committee of Baton Broadcasting Corp. and a direct of the CTV television network. His company benefits directly from at least two government policies - Bill C-58, which penalizes Canadian companies that advertise on U.S. border stations, and simultaneous substitution, the practice of replacing U.S. stations on cable with Canadian ones when both are showing the same program. The two measures put roughly $90-million in the coffers of Canada's private broadcasters in 1984, according to the Caplan-Sauvageau task force on broadcasting.3

The representation of industry interests has been championed by a federal cabinet minister, Marcel Masse, who has been reported in the media to have urged industry interests to lobby more strenuously for exemption to the free trade talks, thereby leaving intact trade protections that promote their economic security. Soon after the trade talks were announced, Mr. Masse began to advocate cultural industry representation. In this regard, Carol Goar has reported on Mr. Masse's active involvement with industry interests as follows:

> The real challenge is to make sure Canada's cultural industries survive and become competitive and matter to Canadians.
>
> Six months ago, Masse launched the third stage of his campaign. He took his message to the cultural czars themselves. He met leading publishers, media magnates, broadcasters and movie producers in Toronto, Montreal and Vancouver.
>
> Eventually a core group emerged led by Toronto communications lawyer Peter Grant of Toronto.
>
> Masse told the group bluntly that, if the cultural sector continued to lobby Ottawa in the old way -- though weak, single industry associations-- it would inevitably be out-spent and outmanoeuvred by the larger, richer American conglomerates. He urged its leaders to recognize their common interests, fight one another's battles, and learn to speak with one voice.
>
> Then he exhorted them to go out and explain to their business acquaintances -- at the Albany Club, at their directors' meetings, wherever they met -- the importance of building a strong, Canadian-controlled cultural sector.
>
> What Masse did -- although he hesitates to put it so boldly -- was help create a new nationalist lobby.[4]

The denial of a distinction between industry interests and the interests of Canadian culture is implicit in Francois Macerola's, President of the National Film Board, comment that: "The cultural industries must be exempted from the present free-trade negotiations between Canada and the United States. The notion of free-trade has become a very fashionable one in our economic community as of late. However, I believe that our culture -- meaning the environment in which it is growing as well as the people and institutions which control it -- has to be entirely excluded from the free-trade negotiations, as is suggested in the MacDonald report."[5] In his article entitled, "Cultural Sovereignty -- A Deadly Drama",[6] Sid Adilman argues that it is private commercial interests that are the custodians of Canadian culture. He therefore equates any reduction in trade protection with a reduction in cultural sovereignty, in the following terms:

The issue is cultural sovereignty and the plot has two main threads:
(1) If the cultural industries/entertainment sectors are on the table at free trade talks with the United States, as the influential External Affairs department wants, they become chips to exchange for territorial rights to the Arctic or other matters.
(2) Linked to that is the question of how many more foreign entertainment companies will be allowed to operate in Canada without restraint.
The government insists it will protect "cultural sovereignty". But how does it define the phrase? No detailed answer is forthcoming.7

It has been the adamant objective of Canadian industry lobbyists to ensure that commercial activities, such as film distribution, are thought of as culturally relevant so that current trade protections can be maintained in the name of cultural, and not economic self-interest.8 The vested economic interest of Canada's cultural industries in maintaining the present regime of trade barriers is well described by Michael Bergman in the following way:

Free trade, enhanced trade, dutyless trade -- these are the appellations of an ill-defined economic policy for comprehensive, unimpeded, tariffless, bilateral trade with the United States. Rarely has national economic policy had such potential for so dramatic consequences on Canadian cultural industries. At stake are these industries' very existence -- for free trade will be their grim reaper. No wonder Canada's cultural industries should have a vital interest in the national debate on whether to implement free trade. Understanding the role of the cultural industries in this debate requires an assessment of the forces pressing for free trade, the nature of the Canadian cultural industries and how the two interact on one another. This means reducing barriers or obstacles to competition, including obviously tariffs and duties, but just as importantly the kind of indirect or non-business advantages which may nevertheless influence competitiveness. All of the implications and all of the paraphernalia of free trade represent the very antithesis of the context of Canadian cultural industries. If ever there was a protected industry, it is the Canadian cultural industries. Not only protected, but protectionist in orientation and outlook. The whole thrust of Canadian cultural lobbying has been to eliminate or reduce foreign competition within Canada and to encourage, or even force, the use of Canadian products. Protectionism is not simply guarding what already exists. In fact, Canadian cultural industries are growing under the cloak of protectionism, and are dependent on it for their continued expansion. Canadian cultural industries need protectionism not only to grow -- they need growing protectionism to grow faster and with increased vitality. Consider the possibilities of increased Canadian content regulations or Canadianization

> of the film distribution system as examples. Surely free trade, if nothing else, would inhibit further protectionism or government intervention.9

Davidson Dunton has pointed out that the media industry has used its resources to advance proposals of public policy that serve their own economic interests, as follows:

> ... the media (advances) ideas that have contributed in (a) substantial way to the formulation of economic policy ... (e.g.) the nationalist campaign of the late 1960's and early 1970's connected with the Committee for an Independent Canada. That was largely a media effort, led chiefly by the Toronto Star and MacLean's Magazine and having the support of a number of writers and broadcasters. It can be deduced, although Ottawa authorities may deny it, that the campaign inspired the legislation setting up FIRA, as well as that affecting advertising in non-Canadian periodicals directed to the Canadian public and advertising on U.S. border stations.10

There can be little argument that the protection of national cultural sovereignty and cultural identity is a vital and necessary objective of all governments, at all times -- including the United States. In free trade negotiations with the United States, the simple (but vital) issue remains -- what barriers to trade can be eliminated without affecting Canada's culture and cultural identity. Members of Canadian cultural industries tell us that no barriers to trade in that sector can be removed and that the sector should, as a whole, be exempted from a free-trade agreement.

2. Industry Arguments For Sectoral Exemption

The following is a delineation of the most consistently advanced arguments by Canadian cultural industries for sectoral exemption from the free-trade negotiations and the proposed free-trade agreement. Although many of the arguments are interrelated, and the following categorization creates artificial distinctions, the following delineation is an attempt to organize and present the most salient and distinct aspects of general arguments advanced by industry lobbyists.

(i) Economic Trade Barriers Protect Canadian Cultural Identity: The industry lobby argues that without present economic trade protections, Canadian culture will not only suffer - it may cease to exist. As well, the argument is often expressed in terms of "cultural identity" and "nationhood", which are dependent upon the present regime of trade protections. The argument is advanced that Canadian culture, not just its expression, is acutely dependent upon and supported by the entire range of present trade protections. Michael Bergman has described the argument against free-trade in the following terms in his article entitled, "The Impact Of Free Trade On Canadian Cultural Industries":

> The argument against free trade, in spite of the many complexities of the topic, is strikingly and simply conveyed by the words and their relationship to each other in the phrase "Canadian Cultural Industries." If Canadian (industry) is compromised, culture is compromised. If culture is compromised, industry is compromised. If industry is compromised, it (culture) simply ceases to exist.11

In Alan Christie's article entitled, "Free Trade Would Cripple T.V. Industry, MPP's Told" the argument to keep cultural industries off the bargaining table is reported to have taken the following form:

> ... Canadian film and television productions are supported by federal and provincial funding and through agencies and laws, including Telefilm Canada, the Canada Council, the Ontario Arts Council, the Ontario Film Development Corp., Canadian content regulations for broadcasters, foreign ownership regulations and the capital cost allowance for certified Canadian film productions. "These programs have been put in place to encourage and develop a Canadian industry in the face of overwhelming foreign domination," he said. "Without them, the Canadian industries could not survive." With Canadian cultural industries gone, Canadian culture will soon follow, ...12

The Canadian cultural industry lobby has taken a hard line on its assertion that any erosion of industry trade protections will bring on the demise of Canadian "culture". Tony Thompson has made the following comment on this industry assertion:

> While Prime Minister Brian Mulroney mutters assurances that there will be no negotiation on Canadian culture (whatever that might mean--Maclean's or the Mounties' Musical Ride), all the media, including book publishers, TV and radio station management, cable operators, newspaper owners, and periodical publishers (both consumer and business) are displaying their 'culture' buttons. The argument from Canadian media owners is that to open the doors to foreigners will destroy Canadian culture.... The 'culture' lobby insists that the nation's 'identity' will disappear if there are no restrictions against foreign ownership.13

David Crane has reported that in January of 1986, Marcel Masse, then Minister for Communications, introduced a comprehensive, 278-page, cultural policy memorandum to Cabinet for approval that would preserve all existing trade barriers by taking them outside the mandate of trade liberalization. The assertion by Masse that the route to cultural sovereignty is the complete economic protection of private enterprise is clear in the following excerpts from that report:

> Canada's cultural sovereignty, Masse told his cabinet colleagues, depends upon the existence of strong, Canadian companies or public institutions like the Canadian Broadcasting Corp. to produce and deliver to the public Canadian books and magazines, films, videos and TV programs and sound recordings ... But Masse reported to his cabinet colleagues that while great progress has been made in raising the quality and quantity of Canadian cultural efforts, many cultural industries were financially weak and hard-pressed to compete against the giant U.S.-controlled entertainment conglomerates that dominate much of Canada's market for cultural goods. If Canada's cultural industries were not strengthened, Masses said, then Canadian cultural sovereignty would be weakened. Free trade negotiations, he said, should not be allowed to undermine Canada's cultural industries ... In addition, Masse argued, Canadian companies should not have a bigger share of the total Canadian market by being able to acquire Canadian rights to foreign books, films and records.14

The vanguard of "cultural security" is often advanced by industry interests that enjoy the substantial "economic security" of trade protections, such as foreign investment restrictions. For example, B.D. Johnson has equated control over the physical distribution of a film product with Canada's cultural identity and security, in the following terms:

> Investment Canada is now considering applications from four U.S. movie and video distributors to move into the Canadian market, including one from Hollywood's Walt Disney Productions. Said Daniel Weinzweig, president of the Toronto-based Norstar Releasing Inc.: "U.S. studios regard Canada as part of their domestic market. If Disney gets approved, it will set a major precedent as to whether we're ever going to control our own industry.... If Canada refuses them, that will send a message to the rest of the world." Traditionally, the United States has strictly guarded against foreign investment in its cultural industries. But it may take a firm voice to convince Americans that Canada is entitled to its own brand of cultural security.15

Sid Adilman, as a voice of industry concern, regards foreign investment restrictions16 as, not only culturally relevant, but essential to the maintenance of cultural sovereignty. The following comments of Adilman are particularly instructive in this regard:

> The federal cabinet is split over whether the U.S. Gulf and Western takeover of Prentice-Hall publishers should be approved for its Canadian operation.
>
> A decision, postponed to late December, will be the linchpin of cultural applications coming before Investment Canada in the next decade.
>
> If Gulf and Western gets it way, say goodbye to sovereignty claims made by the Mulroney team.
>
> Investment Canada also has four current applications from American movie and video distribution companies to operate here.
>
> Two of them already have offices in Toronto, ahead of being granted legal status: Vestron Video and Lorimar. The other two are Disney and Ted Turner's takeover of MGM. All four are responsible and effective companies and rate no criticism from me.17

The relationship between assumed efficient cultural policy implements, the economic prosperity of Canada's cultural industries, and the affirmation of Canadian's cultural identity is succinctly advanced by Stephen Roth in his following assertion that the fate of the two - industry and cultural identity - are inextricably intertwined:

> The vitality and prosperity of the Canadian film industry are essential instruments for affirming our national identity, for expressing our culture, for testifying to our reality and to the influence of the Canadian creative spirit.18

The most popularly advanced argument in this vein is that the industry's exemption from a free-trade agreement should be based on the broad mantle of "Canadian cultural sovereignty". This "tactic" was commented on in the April, 1986 edition of <u>Cinema Canada</u> which reported the following in its "Legal Eye" column:

> The need for a <u>lobby campaign</u> is immediate. It must be effective before the talks develop their own momentum and the disadvantages become submerged although just as real. Cultural sovereignty is only a tactic.... It never will be a goal because the idea of commercial stability and growth for Canadians through Government intervention defeats the entire purpose of Free Trade. The destiny of Free Trade need not be our fate. The Canadian cultural community must of necessity oppose Free Trade -- <u>our existence is at stake</u>.

The assumption that cultural sovereignty and cultural identity rest on the mantle of present trade barriers was revealed by Marcel Masse when he stated that, "cultural sovereignty relies on the instruments of cultural expression and exchange being freely available to Canadians. Without them, our cultural identity suffers."19 Bruce MacLeod, the President of ACTRA has made the following comment:

> At the September federal-provincial meeting of communications ministers there was consensus that the cultural industries must be protected if we are to remain a sovereign nation.20

The notion that the very existence Canada's culture and cultural sovereignty is threatened by tampering with present trade restrictions is reiterated by Jack Cahill in his article entitled "Culture Shock" that makes the following argument:

> Canada's culture is on the line ... how (will) our culture - films, magazines, broadcasting, music, art, fashion, to name a few - survive in free trade negotiations with the United States. It also raises the question: which other Canadian cultural industries are marked for ... defences of sovereignty in the future?21

The welfare Canadian culture is measured by the industry in terms of the economic viability of the industry - both in terms of financial success and in terms of ownership and control. For example, Jeffrey Simpson makes the following assertion in this regard:

> Cultural sovereignty is the soft underbelly of the trade negotiations. Canadians control only piddling amounts of our book publishing and distribution and film industries. If trade negotiations mean we cannot take measures to improve that state of affairs ... then negotiations are probably doomed.22

Similarly, Marcel Masse has advanced the following argument:

> If Canada's cultural industries were not strengthened, Masse said, then Canadian cultural sovereignty would be weakened. Free trade negotiations, he said, should not be allowed to undermine Canada's cultural industries.23

David Crane further reports on Marcel Masse's intertwining of cultural and industrial interests in the following report:

> In this environment, Masse's draft green paper argued, "it is the long-term survival of the Canadian players in the cultural industries which is at stake."24
>
> It is these policies (NTB's) - which strengthen our magazine, book publishing, sound recording, film production and TV programming industries - that could be seriously threatened by Canada-U.S. free trade negotiations....25
>
> And without these forms of cultural communication, our separate identity as a country would be weakened and our political sovereignty clearly threatened. That's why the debate over culture and free trade ultimately is about Canada's future as an independent nation.26

The sacred association of the present regime of trade restrictions with Canada's existence as a culturally independent nation is widely advanced. Any critique of whether or not the present regime of trade protections achieves, or is relevant to, Canada's cultural policies and objectives can be tantamount to anti-national behaviour. Mavor Moore associates "nationalism" with anti-free-trade sentiment in his comment that, "The present state of alarm about our cultural capacity is no mere outbreak of infectious nationalism, as some of our greedier free marketeers would have us believe."27 David Crane argues that the present regime of trade protections is vital to Canada's future as an "independent nation" in the following terms:

> ... the surrender of Canadian policies strengthening these industries would mean that Canadians would have much less access to Canadian magazines, TV programs, records and books. And without these forms of cultural communication, our separate identity as a country would be weakened and our political sovereignty clearly threatened. That's why the debate over culture and free trade ultimately is about Canada's future as an independent nation.28

Similarly, the defence of "nationhood" was raised by Michael Bergmen in the following response to free-trade advocates that claim cultural sovereignty does not have to be at risk in the conclusion of a free-trade agreement:

> All free-trade advocates claim the free-trade negotiations and resulting agreements would in no way compromise Canadian cultural sovereignty or political autonomy. This is a compartmentalized view of nationhood.29

The assertion that cultural industries are essential for the continuation of Canada's cultural identity was also expressed by John Bassett, as reported in the following Toronto Star editorial:

> '(There is) deep concern among leaders of the Canadian cultural community that their heads - and our culture -are on the block in these free trade talks...' John Bassett, chairman of Baton Broadcasting and a longtime Tory, notes that the Canadian cultural industries are "fundamental" to our identity and their demise would threaten our sovereignty. He adds: "I simply can't imagine any government giving away on these issues."30

The federal government task force on the Canadian film industry chaired by two influential members of the Canadian industry made the following assertion in its final report:

> Cultural industries are the means of affirming national cultures. The reasons for the exclusion of cultural industries in the free trade negotiations to be undertaken with the United States are both numerous and evident ... Canadian control of the communications industries is the bedrock of Canadian cultural sovereignty.31

The Canadian industry argues that it is the vessel of Canadian culture, and that if it suffers economically Canadian culture is threatened. Furthermore, the industry argues that the regime of trade barriers that exist to promote the economic welfare of the industry are sacrosanct and vital to the financial viability of the industry, and that such trade protections are appropriate and efficient implements with which to promote Canadian culture. The arguments of Canadian industry in this regard lead to the sweeping assertion that all trade restrictions are essential for cultural industries, cultural industries are essential for the continuation of

Canadian culture, and that all cultural industries must be exempt from free-trade negotiations to ensure the continuation of Canadian culture as a matter of 'national' identity and sovereignty.

(ii) Market Failure: Without government assistance in the form of present subsidies, incentives and trade protections, Canadian cultural identity is at risk because the private market in Canada is not capable of ensuring that culturally relevant content will be produced and distributed. Since cultural wellbeing is premised upon the economic wellbeing of cultural industry, a failure of the marketplace to ensure such economic security demands government assistance - not in the name of economics, but in the name of Canadian culture; economic protection only being a means to a cultural end.

Steven Globerman, in his book entitled Cultural Regulations in Canada, describes this argument in the following terms:

> The general economic arguments in support of government intervention into private (cultural) transactions are largely subsumed under the broad heading of 'market failure' ... conditions that preclude the efficient allocation of resources by private transactions ... the free market will either produce "too much" or "too little" of a particular (cultural) good or service.32

The wide failure of the market place to ensure the creation and dissemination of culturally relevant product has been cited in all major cultural studies commissioned by the federal government since 1982 (Applebaum, 1982; Cohen Report, 1983; Fox, 1984; Lewis, 1985; Stratavision, 1985; Roth, 1985; Nordicity, 1985).33 In recognition of the private market's failure to secure the economic security of the industry, that ensures the creation of culturally relevant productions, the Fox Report34 states that the "new policies' strategic objectives" are both a public sector thrust "intended to assure a ... more effective cultural and social role for the public sector" and "a private sector thrust intended to assure the economic development of a strong private Canadian film and video industry." (emphasis added) The Fox Report states its market objectives in the following terms:

> The policy's final thrust is deliberate.... The two thrusts are fully complementary. The private sector thrust will focus on assuring the economic growth of the Canadian-owned film and video industry and thus the greater availability of Canadian productions to Canadians.35

Similarly, Stephen Roth and David Crane have asserted36 that "the market economy of Canada doesn't support the industry" and that the "large and dominant U.S. economy distorts Canadian production" and access to Canada's distribution system. They have asserted that cultural industries are dependent upon public support in addition to any market "success" the industry may achieve. The goal of any such public support, they argue, must be to achieve equilibrium with the United States' power in the marketplace.

(iii) Countervailing Power By Trade Protections: In the interest of securing Canada's cultural identity by ensuring the economic viability of Canadian industry, the failure of the market to provide such "cultural security" is explained in terms of the "dominating" influence of the United States - both culturally and economically. The economies of scale enjoyed by American 'cultural' traders are therefore the source, in various facets, of Canada's cultural insecurity.

Steven Globerman has described the industry's concern over the threat of the United States' dominant market position as follows:

> A ... broad rationale put forward for the existence of market failure in the production of "Canadian" culture is the cost disadvantage that Canadian producers suffer vis-a-vis American producers. This disadvantage allegedly derives from the greater scale economies enjoyed by American

producers. The latter, in turn, "dump" their output into the Canadian market at prices that Canadian producers cannot afford to match. The 'unfair' competition doctrine as applied to culture has also been applied in protectionist arguments for tariffs as well as for restrictions on incoming foreign direct investment.37

The Roth Report,38 as most of the other federally commissioned studies cited herein, urges the creation of trade protections that facilitate a levelling of the trade playing field to enable domestic cultural industries to survive in a market-place much smaller, relatively, than that enjoyed by United States' corporations. In this vein, the Roth Report advances the following concern:

> No industrialized country with a domestic market of fewer than 100 million, is capable of fully developing a national film industry without state support ... all governmental measures adopted to date have been aimed exclusively at films.... None of these measures focus directly on the development of film companies. This must now be corrected.39

As discussed below, it is argued that the economic power of the United States' industries has broad implications for the dissemination of Canadian product-therefore Canadian culture. The Stratavision Report40 asserted that, "... the Major's powerful position in the U.S. Market is used as leverage to maintain a dominant position in the market for independently produced properties distributed in Canada."41 As well, the Applebaum Report42 cited the ability of United States producers to invest greater sums of money to create an extremely high quality (i.e. high market-consumer demand) product that receives greater access to the Canadian market place than lower budget domestic productions. The Applebaum Report argues that "foreign content" product floods our media because of a "lack of financial resources, the essential underpinning for such an industry, because the Canadian audience is limited in size" and "lacks adequate access to distribution facilities ... (which) makes the audience for Canadian films even smaller."43 Similarly, the renowned Canadian economist Richard Lipsey[44] has argued that the Canadian market is too small to financially support the creation of "cultural" product that would not be of interest to other markets.

David Crane has summarized the arguments of the Canadian industry that are based on 'economic disadvantage' into the following categories of concern:[45]

1. large U.S. corporations have greater financial resources, in terms of assets and borrowing power, to produce product ("block busters") that have popular and established market success in Canada;
2. large U.S. corporations can pay more money to acquire either title to, or exclusive distribution rights for, both Canadian and foreign product;
3. the relatively small Canadian market, and therefore relatively smaller revenues, limit the amount that can be used for production of product targeted for a Canadian market - Canadian producers have not established international audiences for their product and an international network or infrastructure for distribution. The international markets for U.S. product, and the sophisticated advertising networks they have established create both financial and marketing advantages for U.S. product in Canada;
4. the U.S. industry has a well developed technical and marketing infrastructure domestically, with a depth of talent and expertise far beyond Canada's industry; and
5. the U.S. industry has vertically integrated its component production industries into monolithic financial powers that has serious implications for competition in the market place with independent producers. For example, distribution decisions are made by a small number of producers that control the bulk of the world's distribution facilities.

These concerns have also been widely discussed by Marcel Masse, as described in the following report by David Crane:

> As Masse told the Conference Board of Canada in June, "as the transformation of our economy continues, multinational conglomerates are divesting themselves of their resource and manufacturing holdings and are moving into such fields as film and video, sound recordings, publishing and broadcasting." And "once they have entered the cultural industries, multinationals enjoy many advantages over their domestic competitors.: Their vast revenues make it easier for them to raise capital and minimize risks while their control over both production and distribution gives them an outlet for their products. And their diversification allows them to cross-subsidize higher risk activities such as new novels from stable areas such as textbook sales. "The result is that they soon come to dominate the cultural industries they enter," Masse said. "The multinational conglomerates' risk-reduction strategies (fewer products and bigger marketing budgets) have powerful consequences for the availability of all products in Canada's cultural marketplace," the green paper continued. "Not only do these strategies result in fewer product releases, marketed heavily across Canada with the reinforcement of the chain-store environment. But the ubiquitous blockbusters -- based essentially on 'mainstream' American taste -- also become the norm, dictating the criteria for mass acceptance in terms of content, packaging and distribution." Thus, "these strategies, combined with the fact that Canada is not seen as a separate and distinct market for cultural products, work to the disadvantage of Canadian creators and producers. The result is the marginalization of Canadian culture within Canada itself."46

The argument concerning the dominant market position of foreign trade competitors due to economies of scale is often framed in terms of a need to protect consumers from such domination in order to ensure that culturally relevant material will be produced, thus correcting the market's failure to provide fodder for Canadians' cultural identity.47 The argument, is therefore advanced, that financial assistance from the government will provide economic equilibrium, thereby allowing the market to work to produce culturally relevant products in the best interests of consumers.

(iv) Economic Support Of Culture: Having briefly reviewed the arguments concerning the need to financially support a marketplace that cannot produce and distribute culturally relevant material in the shadow of an economic giant, it is important to note that it is a fundamental tenant and premise, assumed by the Canadian industry, that financial support of Canadian industry will lead to the creation of material that will reflect and enhance Canadians' sense of cultural identity and national uniqueness. It is assumed, in all of the arguments advanced by the cultural industry lobby, that the present collection of trade protections fosters and promotes the creation of product that is relevant to Canadian culture, history, society and identity. Under the broad tenet of "nationalism", the financial support of the cultural industries is, just as broadly, justified. The vast majority of quotations cited in this Chapter reveal this fundamental assumption of Canada's cultural industries, and perhaps this point can be only marginally reinforced by Steven Globerman's following comment:

> ... economists have noted that a substantial portion of government actions having the effect of redistributing income from broad segments of the population to specific interest groups are undertaken in the name of providing (cultural) nationalism.48

(v) <u>Outflow Of Canadian Revenues</u>: The domination of Canada's cultural marketplace by foreign corporations constitutes an economic drain on members of the Canadian industry because such revenues, paid by Canadians, are not being reinvested in the best cultural interest of Canadian consumers. Therefore, any trade protections that require such foreign corporations to invest their Canadian profits into Canadian cultural production, is welcome by the Canadian industry in the name of 'cultural stimulation'. In a sense, the Canadian industry has argued that there is a moral obligation on commercially successful and powerful foreign corporations to financially contribute to the well being of their domestic competitors - not so that Canadian industry will financially benefit, but so that culturally relevant and unique product can be created and distributed in Canada.

In this regard, Sid Adilman cites the Roth Report's findings to support this argument in the following excerpt from his article entitled, "U.S. Unlikely To Comply With Task Force Proposals":49

> Page after page, the nine-member Task Force attacks the studios' control of Canada's movie and video distribution. On page 8: "In practice, the American industry considers Canada to be part of its domestic market. When it acquires American distribution rights for a film, it insists on Canadian rights as well. "This situation is unique in the world; it poses a threat to Canadian sovereignty and hampers the growth of our industry, which is trapped in a truncated industrial structure. Ties that should exist between Canadian production and distribution are inoperative, since our domestic market is under foreign control." On page 13: "Approximately 97 per cent of the profits from distribution in Canada were amassed by foreign companies, primarily American. This stranglehold has recently tightened.

David Crane50 has argued for Canadian public intervention into the market place as follows:

> Canadian-owned companies produce virtually all the Canadian books, magazines, TV programs, movies and sound recordings that we read, see or hear. But they are marginal players in a Canadian market that is dominated by subsidiaries of big, mainly U.S., multinationals. These subsidiaries earn most of the profits in Canada's cultural marketplace, but ship the lion's share of those profits home to finance U.S. cultural activities.

David Crane has also reported that Marcel Masse has relied on this concern in arguing to his cabinet colleagues that broad protectionist policies should be adopted in favour of Canadian cultural industries.51 In that regard, Mr. Crane made the following report:

> Masse contended these huge enterprises reinvested almost nothing in Canadian cultural activities in spite of their major presence and significant profits from the Canadian market ... they invest virtually nothing in Canadian cultural products. Instead their revenues from the Canadian cultural markets are used to finance U.S. cultural products.

The Roth Report argues that Canadian distribution companies are excluded from the profits of the film industry in Canada, and since "national distributors contribute to the financing of national productions", then "all distribution of films and videos in all media in Canada (should) be by companies owned and controlled by Canadians."52 The Roth Report similarly makes the following assertion in this vein:

> ... (the) alienation of Canadian distributors from profits and control over domestic distribution of all product poses a threat to Canadian sovereignty and hampers the growth of our industry, which is trapped in a truncated industrial structure. ... our domestic market is under foreign control.53

The economic basis for such recommendations is described in the Lewis Report that concluded that the real index of the contribution of the distribution sector to the capitalization of the Canadian film industry is the amount of revenue eventually reinvested in the production sector from royalties, commissions, distribution advances, direct investments, and other similar forms of investment. Using data from Statistics Canada, that study found that virtually all royalty payments received by Canadians from the distribution sector come not from the "U.S. Majors", which account for the greatest revenues, but from relatively impoverished Canadian-owned firms. In 1981 and 1982, Canadian-owned distributors paid out $12.2 million or 6-9% of total revenues as royalties to Canadian producers. Over the same years, the foreign-owned distributors earned $383 million in the Canadian theatrical market and returned only $300,000 or 0.08%. The editorial of <u>Cinema Canada</u> of December, 1985, entitled "Free Trade and the Cultural Industries: A Canadian Strategy" relied on similar statistics to argue that trade protections that restrict direct investment and foreign access to Canadian markets are justified, as follows:

> For those who still need to be reminded of such distortions, recent StatsCan data for 1982 show that though Canadian-controlled film and video distribution companies account for 83% of total Canadian ownership, it's the 17% foreign- controlled distributors that took in 73% of total gross revenues (nearly $300 million), and paid nothing in royalties, rentals or commissions to Canadian copyright owners. It's such distortions that drive the largest Canadian producers (from the Herous-Kemeny-Lantos-Roth Alliance to the smaller Bobby Coopers, Hirschs, Shapiros or Simcoms) to operate part -or full-time from L.A., and conversely result in Lorimar, MGM and Disney waiting just outside the Investment Canada gate for permission to pen production offices in Toronto.54

It is important to note that the cultural industries regard the economic domination of the Canadian marketplace as a trade distortion, rather than as a result of comparative economic advantage and the resulting efficiencies that affect all international trade relations. The industry implicitly assumes that industry revenues, domestic or foreign, will be used to create culturally relevant product. The outflow of revenues is regarded as a trade distortion, rather than a trade deficit, and thus regarded as especially offensive given the failure of foreign corporations to produce or distribute Canadian product.

(vi) Foreign Distributors Refuse Canadian Product: Canadian industry argues that Canadian culture is at risk because foreign owned producers and distributors that are vastly more financially successful in the Canadian marketplace refuse to distribute Canadian product. Since foreign distributors "tieup" Canadian exhibitors with "blockbuster" releases on mandatory release schedules, Canadian product will not be produced, distributed and exhibited. The solution proposed by Canadian industry is to enforce trade protections that require all such distribution and exhibition facilities to be owned and controlled by Canadians. Canada must, therefore, carve out a market niche for Canadian product to ensure that there is freedom of choice so that Canadians can choose to see Canadian made product. Pierre Juneau has been quoted as making the following assertion in this regard:

> Canadians don't have "freedom of choice." As a matter of fact, in one sense, it's true. But the real choice they don't have is the Canadian one. How can they have freedom of choice when 96 per cent of the TV drama available in Canada -- and popular drama is the most watched form of television -- comes from the United States?....55

It is argued that foreign industries controlling the most active and successful "cultural" enterprises in Canada think of Canada in terms of a North American market, and therefore will not produce or distribute any product any product that will not succeed in the United States. Such foreign distributors always make production and distribution decisions on the basis of commercial viability in the North American market and not on the commercial viability of a product strictly within the Canadian market. Canadian cultural industries argue that it is the failure of foreign enterprises to consider Canada as a unique market that hampers the production and distribution of Canadian material. The Lewis Report argues that the root of the problem is the "U.S. Major's virtual disinterest in the distribution of Canadian feature-length films"56 that poses a threat to Canadian culture. Paul Audley also argues that, "The U.S. majors are not at all interested in distributing films whose primary market will be in Canada."57

In a sense, the industry argues that the economic power of foreign industries exploits the Canadian market without financially contributing to the cause of a culture and a way of life that foreign industry decision makers know very little about. For example, the best interests of "U.S. majors" are best served by the production of material it knows and understands, and material that will have the greatest market success - in both Canada and the United States. Canadian industry argues that the enhancement of Canadian culture is not a relevant consideration in the production or distribution decisions of foreign corporations and that Canadian industry <u>will</u> produce and distribute culturally relevant product based on domestic criteria. Trade regulation, in the form of discriminatory film distribution, is therefore required to ease the grip of foreign domination to enable domestic industry to produce and distribute culturally relevant product in Canada as the primary target market.58

As well, these arguments are supported by the assumption that only Canadian nationals can contribute to Canadian culture, tell stories about Canadians and the "Canadian experience". Canadian industry has argued that the nationality of the creator and distributor is the independent variable, rather than market forces, in the equation that decides whether or not a culturally relevant product is created and distributed. Alan Cristie, in his April 15, 1986 article entitled, "Free Trade Would Cripple T.V. Industry, MPP's Told", reported that the submission by ACTRA to the Ontario government's trade committee made the connection between 'Canadian's telling their own story' and industry exemption from Canada-U.S. free-trade negotiations as follows:

> ... "we as a country will no longer be able to tell our own stories. And that will spell the end of our cultural sovereignty." Roger Abbott told the committee "our basic point is to urge the provincial government to tell Ottawa that cultural matters must be left off the bargaining table" in any talks with the United States.59

(vii) Domestic Protections Are Not Trade Barriers: In order to preserve all of the present government support policies and programs that economically benefit the Canadian industry, the argument is advanced that the domination of the Canadian marketplace by foreign interests reveals the open nature of Canadian trade policies. The "billion plus" dollar trade surplus in cultural services and product enjoyed by United States industry (Roth, 1985; Stratavision, 1985; Applebaum, 1982), it is argued, is a testament to the free access foreign industries have to the Canadian marketplace. David Crane summarizes this argument in the following way:

> The Canadian struggle is not to keep U.S. cultural products out -- that would be impossible as well as foolish -- but to make sure there is a Canadian presence as well.... Canadian cultural policies do not prevent Americans from selling their books, magazines, records, TV programs and movies in Canada -- their purpose is to ensure that there is also a place in the market for Canadian books, magazines, records, TV programs and movies.... There is already virtual free trade in cultural industries between Canada and the United States, as evidenced by the domination of U.S. cultural products in Canada and a cultural trade surplus for the U.S. of about $1.5 billion.60

As well, the Applebaum Report reviews the various rationales for the existence of public production enterprises in the cultural sector and argues that, "neither the production of the (National Film Board) nor of the (Canadian Broadcasting Corporation) has attempted to challenge the domination of our television and movie screens by U.S. feature films."61 The Canadian Periodical Publisher's Association has also advanced this argument as follows:

> The issue, ... is not free trade. Canada has an open border and no tariffs or other barriers to U.S. magazines. "At issue is whether Canadians will continue to enjoy the variety and choice of Canadian magazines that they do today." The programs that help Canadian magazines and which U.S. industry wants eliminated "do not restrict trade. They merely give Canadian magazine publisher a fighting chance to survive in their own country."62

Martin Cohen, in his article entitled, "U.S. Dominates Cultural Industries In Canada, Secret Federal Study",63 probably refers to the Lewis Report64 when he cites the following statistics as evidence that Canada's cultural protection policies are not trade impediments:

> **The study, which reports that foreign multinationals are delivering foreign -- mostly American -- culture, found that: 71 percent of English TV is American; 98 per cent of films are foreign, mostly American, compared with a minimum of 20 per cent penetration in Britain, France and Australia; Records and video sales are 84 per cent foreign, compared with roughly one-third in Britain and France; 75 per cent of books sold are foreign, compared with less than 20 per cent in France and Britain.**
>
> **This means that only a fraction of the already small, 25 million-person domestic market is left for struggling Canadian firms.**

Marcel Masse has argued that all present trade protections are designed to protect only the domestic trade of Canadian cultural product and do not function as trade 'barriers' to foreign industries seeking equitable access to Canadian markets.65 Masse has relied on this issue to request that cultural industries be excluded from the free-trade negotiations, as described in the following report:

> This support, (all present government programs and protections for Canadian cultural industries) Masse stressed to his cabinet colleagues, did not constitute a significant tariff or non-tariff barrier to trade, in view of the massive flow of U.S. culture into Canada in spite of these programs. Therefore, they should not play a significant role in the Canada-U.S. free trade talks.66

(viii) Open U.S. Market: In addition to the argument that the United States industry has free access to the Canadian market, the Canadian industry argues that there is also free access to the United States market now within their sector and they worry they have nothing to gain from the free-trade negotiations if any economic support programs are eliminated. Therefore, cultural industries in Canada have argued that their sector should be excluded from negotiations since they have nothing to economically gain from trade liberalization between the United States and Canada. With the exception of "local" ownership restrictions for television and radio stations and some government subsidies and tax incentives for "local" television, performing arts and visual arts enterprises,67 Canadian cultural industries do not face any form of trade barriers to the United States market and they worry that they are being held hostage in negotiations to win trade concession for other industries. Both Stephen Roth and David Crane have argued for a sectoral exemption from a free-trade agreement on the basis that cultural industries have nothing to gain and a lot to lose - and as was proposed by Mr. Roth, "if it ain't broke, why fix it."

(ix) Direct Control of Content: Canadian cultural industries argue that indirect instruments of cultural policy in the form of trade barriers are preferable to direct and non-discriminatory content incentives because "output" criteria, that would ensure that public expenditures are tied to the creation of culturally relevant product, are subjective and would expose Canadian industry to a form of censorship control. Although industry interests justify public expenditure on cultural grounds, they adamantly resist any commitment to spend public money on product that contributes to Canadian national identity and culture. The following Globe & Mail report of January 30, 1987 illustrates this issue:

> While almost universally applauding Telefilm's success in promoting Canadian activity, the industry that it nurtures is troubled by what it perceives as a growing contradiction in the agency's mandate: is its mission cultural or industrial? "Most of that confusion is fairly legitimate", Mr. Pearson (Director of Canadian Film Development Corporation) said, "because what we're saying is we're only going to finance the cultural projects that we think have some kind of market life, which then makes our critics come back and say to us, 'You're just using an industrial criteria.'" In any case, Mr. Pearson is not as torn as others by the supposed dichotomy between cultural policy and industrial policy, thanks to his wide definition of what constitutes Canadian culture. "I think Canadian culture is what Canadian artists want to do, period. I don't think it's more complicated than that."[68]

(x) Flood Gate: A common concern raised by cultural industries is a fear of where the line will be drawn, if it can be drawn, to limit the dismantling of trade protections undertaken in the cause of wider trade liberalization. The cultural industries will not admit that some trade protections cannot be justified on cultural grounds for fear that any close and critical scrutiny of some programs will lead to the critical evaluation of all such programs, and then to a broad dismantling of programs under the same broad stroke (i.e. cultural nationalism) that they use to justify a complete exemption from a free-trade agreement. One "Ottawa official" has been anonymously quoted as describing the concern in the following terms:

> "It's like the Domino Theory,".... "Once you start to take cultural policies apart, the whole thing unravels. And once you lose ground, it's hard to get it back."69

The possible articulation of principles and criteria upon which to distinguish culturally required programs from illegitimate economic trade protections, is the basis for the cultural industry's knee-jerk assertions that all existing programs and trade protections are relevant to, and vital for, Canadian culture.70

A related and important factor to this issue is the complicated nature of the economic analysis required to evaluate the relevance of each such program and trade protection to Canada's cultural policies. As will be discussed below, no comprehensive evaluation research has ever been conducted in Canada. Unfortunately, repetitive and superficial industry profiles have substituted for thorough, critical evaluations of present programs toward discerning which implements are appropriate to achieve Canada's cultural objectives.71 In the absence of such research and analysis, and in the absence of any guidance as to where to draw the distinction between cultural programs and economic trade protections, cultural industries tend toward the least complicated, least demanding, economically beneficial, and most expedient alternative, i.e. to uncritically assume that Canada's cultural interests are best served by, and consistent with the interests of, Canadian cultural industries, and thereby exempt the entire sector from a Canada-U.S. free-trade agreement.

CHAPTER V

CRITIQUE OF INDUSTRY POSITION: DISTINCTION BETWEEN ECONOMIC AND CULTURAL PROTECTIONISM

"The spectacle of CFTO's ... and CTV's ... rallying to the side of Canadian culture is enough to produce nausea in all but the most hardened students of broadcasting history."

Robert Fulford, Saturday Night. March, 1986

The ability of Canada and the United States to differentiate between legitimate domestic policies that are not subject to review by a bilateral trade tribunal and illegitimate economic trade restrictions that are to be eliminated by a trade liberalization agreement requires a critical evaluation of the ability of relevant trade restrictions to achieve their cultural policy objectives. Canadian cultural industries argue that all present cultural programs are essential to the realization of Canada's cultural objectives, and that all such programs should be excluded from the free-trade negotiations in the interest of Canadian culture.

The following is a brief delineation of the most prominent critiques of the Canadian industry's position, which are here reviewed and discussed with a view to establishing the criteria upon which a distinction between economic and cultural protectionism may be discerned.

(i) Industrial Lobby And Public Policy Formulation: Are the economically vested industrial interests appropriate and unbiased advisors as to how Canada should achieve its cultural policy objectives? It is submitted that they are inappropriate cultural policy advisors and that the industry's pronounced economic interests in the field of cultural policy demands critical evaluation of any "cultural" advice they propose. Perhaps those who formulate Canadian cultural policy should be most sceptical and critically cautious of the lobbying efforts of those who have the greatest financial interest in maintaining the trade protections at issue in free-trade negotiations. The confusion of economic and cultural protectionism obscures the wider issue of rational trade liberalization, and economic protection becomes the foundation, not for cultural protection, but for job creation and financial prosperity within the industry. The confusion of Marcel Masse in this regard is evident in the following excerpt from an interview which appeared in the Canadian Business Review:

> One of my main ambitions was ... to make sure ... that the policy options presented to me by my departmental officials really reflect not just the view of the department, but the much broader view of the people in the arts and cultural industries for whom the policy is being developed ... in a department like Communications our clients are very sensitive. I discovered this sensitivity early ... there is job creation potential in culture. Since culture is a part of our total economy, we began to emphasize figures, data, regional investment, job creation, return of our public investment, and all the impacts of culture. I began to look at cultural products like industrial products. Do we invest in production? Do we use public money or private money? How much do we invest? Where do we invest? Who will invest? How do other nations behave in these respects? From these initial questions, we began to study the consumer aspect of culture and the market for culture.

The industrial lobby seeks industrial protection in the name of cultural protection and attempts, with some apparent success, to have the formulators of cultural policy, the federal government, consider the industry to be their "clients" and not the Canadian people. As well, one must be critical of "cultural" policy recommendations advanced by government commissioned task forces chaired and controlled by Canadian industry interests, such as The Film Industry Task Force, that concluded that all "distribution of films and videos in all medias in Canada be by companies owned and controlled by Canadians."1 In response to the arguments advanced by Canadian industry, and in recognition of their conflicting interests in the face of competing public policy objectives, Robert Fulford has stated the following in his article entitled, "Blaming The Yanks":2

> In December, Sid Adilman of The Toronto Star reported that "a high-profile strategy group" had been formed, with $100,000 contributed by its members, to lobby against bargaining away the cultural industry. The first name on the list of members was that of John Bassett, the chairman of the board of CFTO-TV in Toronto. In 1960 Bassett won the licence to operate his station by promising, among other things, Canadian drama productions. Since then the station has produced many millions of dollars in profit and very, very few dramas. The spectacle of CFTO's father and CTV's dominant voice rallying to the side of Canadian culture is enough to produce nausea in all but the most hardened students of broadcasting history.
>
> Another defender of our heritage turns out to be Paul Morton, the president of Global television, who has been publicly advising the government to keep present regulations in place. Global's record is less bad than CTV's, but only because it is shorter. In 1972 it acquired a licence with promises of Canadian programming that were, if anything, even more extravagant than Bassett's. When Canadian programming proved unprofitable, Global (which was not then Morton's responsibility) switched to buying programmes from Hollywood. Aside from news, public affairs, and sports (and a dozen or so recent half-hour films on Global), the contribution of these industry statesmen to Canadian culture remains minimal. Cultural politics, like ordinary politics, makes strange - and uncomfortable - bedfellows.

Furthermore, Fulford focusses on the issue of the lobby's attempt to obscure the distinction between cultural and economic protectionism as follows:

> The possibility of a free-trade agreement with the U.S. has stimulated a powerful outcry for Canadian cultural sovereignty. But cultural sovereignty is not the real issue.... The effect of the lobby, however, has been to obscure other issues, and to create a distorted impression of what Canadian culture is and why it deserves protection.3

Lyon and Trebilcock's study of the relationship between cultural public policy and the economic interests of cultural industries that lobby for trade protection present the following concern in this regard:

> "... the primary beneficiaries of protection ... can be expected to be the principal instigators of protectionist nationalistic policies...." It is not surprising that groups (with economically vested interests) such as the Association of Canadian Television and Radio Artists, the Council of Canadian Filmmakers, and the Association of Motion Picture Producers have been extremely vocal in promoting cultural nationalism.4

A few recent critics of industry's exploitation of "culture" to achieve their economic objectives have challenged the assumption that "cultural industrialists" are appropriate spokespersons to represent the <u>cultural</u> interests of Canada. In his article entitled, "Cultural Maturity Will Protect Us From Political Damage", Peter Roberts discusses this concern as follows:

> There is an understandable concern that these hard-won gains (various NTB's) in the cultural sector will turn up in the free trade bargaining process and may be bargained away against something of no value to Canadian culture. I think these are legitimate concerns, <u>but I think also that they miss the main point</u>. Let me talk for a moment about the cultural industries -- a disagreeable term, but one we all understand. A cultural industrialist is someone who tries to make a profit out of culture, as opposed to most cultural practitioners, who are making a loss. A cultural industrialist, moreover, is concerned especially with the distribution of cultural goods produced by somebody else, although he or she has probably been closely involved with the production process, too. <u>I am afraid that in our concern for the health of the cultural industries, we have sometimes forgotten about the culture</u>.5

Peter Worthington, in Barry Shelby's article entitled, "A Neighbours Trade Dilemma" is quoted as arguing that, "what poisons the free-trade well, or at least taints it, is that <u>certain vested interests (... ersatz nationalists)</u> insist that ... our sovereignty is threatened ... our culture undermined."6 Even Mordecai Richler has expressed the concern that "... nationalists are lobbying for the imposition of Canadian-content quotas in our bookshops and theatres.... In a word, largely second-rate writers are demanding from Ottawa what talent has denied them, an audience."7

Various economic analyses of the relationship between the financial interests of industrial lobbys and the ideological justification of "nationalism" to promote and foster policies that serve their economic interests have concluded that such posturing is, at best, suspect and most often irrelevant to the nationalist objectives espoused. One such study has been undertaken by University of Toronto's Professor Albert Breton.8 His study cites others9 in reaching the following conclusion:

> The thrust of this paper ... (is) that the objectives, strategies and tactics of nationalists are rooted, not in (foreign domination concerns) but in the own private interests of the nationalists ... the pursuit of nationalist objectives is in the self-interest of 'nationalists' is an important one ... the self-interest hyporesearch paper helps one to cut through the ideology and to focus on the real issues (economic self interest).

Steven Globerman's study entitled, Cultural Regulation In Canada,10 also cites other studies in reaching his conclusion that cultural policy formulation in Canada has been manipulated by private economic interests at the expense of both public funds and the formulation of otherwise efficient cultural policy programs. In this regard, Globerman makes the following assertions:

> In recent years, a substantial body of literature has developed supporting the view that government intervention into market activities is the outcome of supply and demand forces in political "markets". An implication of these studies is that a substantial amount of government legislation is induced through the lobbying efforts of narrowing defined interest groups, and that market failure considerations may have little or no relevance. Rather, the demand for governments to intervene is to alter the distribution of income. ... models of economic nationalism have argued that narrowly defined ... groups tend to be the beneficiaries of nationalistic policies, including government intervention undertaken to promote cultural nationalism. In contrast ... this latter group of studies suggests that cultural intervention will reduce allocative efficiency in the cultural industries, while benefitting a narrow and relatively well-off segment of the population. In short, government becomes a mechanism whereby the economically and politically more powerful

advance their interests at the expense of the great body of the population.11

In response to industry assertions that the trade protections it seeks are "cultural" protections commonly employed in other jurisdictions, Globerman puts that argument into its political context as follows:

> I would speculate, however, that cultural intervention in other countries is determined by the same political dynamics as found in Canada: a relatively small group of beneficiaries manipulate the political process to the disadvantage of the majority. If true, cultural intervention abroad offers no broad justification of similar trade protections.12

A sceptical eye on "cultural politics" is also cast by Robert Fulford, with a warning against industrial lobbyists bearing cultural gifts, in the following arguments:

> At times lately it has appeared that Canada has substituted cultural politics for culture. (We may not have great art but we have great task forces.) Everyone has spent far more time talking about political issues - the menace of free trade, the problem of American ownership - than about the substance of the arts themselves. People who have seldom read a Canadian book or seen a Canadian film have declared themselves passionately devoted to our "cultural sovereignty," a term previously unknown in their vocabularies. A celebrated television producer, well known for his pronounced aversion to Canadian culture, recently declared that cultural sovereignty is looming as the most potent issue of the future - "the acid rain of the next five years," as he put it. The ownership of a mediocre, branch-plant textbook publisher, Prentice-Hall, suddenly became crucial to people who had barely heard of it until a year ago and may never have held a Prentice-Hall book in their hands - "This is the one we've got to win," a cultural nationalist said to me, vehemently, the other day. Private broadcasters who have made millions mainly by importing cop shows and situation comedies from Los Angeles have been transformed, by the passionate lobbying of recent months, into born-again nationalists, even anti-Americans, and are now receiving a good press for their cultural views. The possibility that free trade with the U.S. will alter or eliminate cultural protectionism and subsidy has brought together, in one lobby, an astonishing collection of disparate personalities and interests.13

Even some of Canada's cultural statesmen, like Pierre Juneau, have resisted the ideological banner of "cultural sovereignty" and attempted to keep the debate in strictly cultural terms. Juneau has attempted to restrict the rhetoric to cultural concerns, and has expressed some discomfort with protectionist logos. In his address to 28th Annual Canadian-American Seminar on November 6th, 1986, Juneau expressed the following in this regard:

> ... I'm not sure that I or anyone can offer a proof for the existence or non-existence of identity or a demonstration of the exact impact of cultural industries on identity.... For instance I'm not sure the phrase that has recently been in greater use, 'cultural sovereignty', is helpful in the debate about public support for cultural development because it is ambiguous. If it is intended to mean that Sovereign States should be fully entitled to use their legislative and financial means to support the cultural development of their citizens, the meaning should be unassailable.14

If "cultural sovereignty" is used to go beyond the support of the cultural development of Canadian citizens, then it is assailable as exploitive rhetoric that is manipulated to achieve the selfish economic goals of a few at the expense of all other Canadians, and Canadian culture itself. Cultural policy formulators should be vigilant against the ulterior economic motives of an articulate industry that controls the media that delivers its message to the Canadian public. As well, it is argued that cultural policy formulators should resist the ideological rhetoric of "cultural nationalism" that manipulates and directs, otherwise legitimate, national patriotism against those that threaten the economic interests of those that mobilize such rhetoric. Migue comments on the exploitation of nationalist ideology by economic interests to influence government policy as follows:

> These choices do not reflect the will of the people. The pursuit of personal interests, disguised as protectionism, has now superseded altruism and brotherhood as the fulcrum of political decisions inspired by nationalist ideology. The government becomes the instrument for the

> exploitation of the general public to the specific benefit of narrow group interests. More specifically, it is an instrument of coercion used by the strongest and best-organized interest groups in order to transfer wealth in their favor to the detriment of the population as a whole. Contrary to the market system, it serves as an instrument by which certain groups transfer the burden of their choices to others.15

(ii) Impact Evaluation Research: The research studies that have been undertaken in the last twenty years,16 repetitively deal with industry profiles and comparisons of volume of goods sold, distributed, and manufactured by Canadian and U.S. corporations and the different profit levels, etc., of each nation's corporations. The conclusion of "foreign domination" of Canada's "cultural" markets is unanimous. However, neither the government nor industry have undertaken studies that evaluate the impact (success or failure) of relevant industry support programs and trade protections to assess their relationship to Canada's cultural objectives. A few preliminary evaluation studies have been undertaken, to which this paper will refer, but the cultural industries have refrained from any comprehensive critical analysis. The studies that have been undertaken (Lyon, Trebilcock, 1982; Migue, 1971, 1979; Globerman, 1984, 1986; Lipsey, Smith, 1985) cast doubt on the relationship between the present economic protection of cultural industries and the creation and protection of Canadian culture. Dr. Richard Lipsey has cited one internal government study on this topic and advises that it casts "doubt" on the effects of such programs as follows:

> However, an internal government study paper casts some doubt on this premise (i.e. that advertising tax law amendments create an incentive to sponsor Canadian radio and television stations, which in turn promote Canadian cultural interests). After a careful study of the facts, the paper concludes that the increase in total revenues of all border television stations due to Bill C-58 was ... about 4% of the total revenues of all the affected stations. Furthermore, the U.S. border stations expressed a willingness to pay Canadian taxes by setting up Canadian subsidiaries, and prorating their revenues, so that revenue from Canadian sources would be taxed in Canada. Thus, we begin to doubt that the

> principal effect of the policy was to support stations that would otherwise have failed.17

The dearth of critical "impact evaluation research" to ensure that the expenditure of public funds to private industry is contributing to Canadian culture and cultural policies is conspicuous, given the principle basis of justification, i.e. "cultural sovereignty", advanced by industry interests. The cultural industries have responded to the few studies that have been done, all of which reveal the distinction between economic and cultural protectionism, not in terms that address their conclusions, but in terms wrapped in the rhetoric of "anti-nationalism" and "anti-cultural policies". For example, David Crane has avoided confronting the critical conclusions of such studies by dismissing them as opposing the cultural objectives of the trade restrictions and thus, Crane avoids addressing the 'a-cultural' effects of trade restrictions ostensibly employed to achieve cultural policies. In this regard, David Crane has simply stated the following in avoiding the critical issues raised by such studies:

> ... the only one that really dealt with cultural industries was done by the C.D. Howe Institute which opposes a number of key cultural policies and which used as its cultural expert Steven Globerman, a Simon Fraser University professor who has been a long-term opponent of many Canadian cultural policies.18

The Canadian cultural industries can be criticized not only for their failure to recognize and respond to existing critical impact evaluation studies, but for their failure to undertake similar studies assessing the relationship between economic trade protection and the realization of Canada's cultural policy objectives. The various conclusions of the preliminary studies that have been undertaken are discussed below.

(iii) <u>Economic Protectionism: Indirect and Inefficient Implements of Canadian Cultural Policy Implementation</u>: All of the preliminary studies that have evaluated whether or not the present regime of financial incentives and trade protections that benefit cultural industries is successful in achieving Canada's cultural objectives have concluded that, although such policies may be in the financial interests of a few producers, creative artists, distribution companies and exhibitors, such programs are indirect, inefficient and unsuccessful cultural policy implements. All such studies point to the failure of present economic protections to promote the creation of artistic works that contributes to the unique cultural identity of Canada. Such studies point out that the same cultural industries now concerned about cultural sovereignty are the same industries, while supported with public funds, that argue for reduced CRTC Canadian content requirements, produce the majority of television programs that are produced in Canada for U.S. audiences, refuse to distribute domestic product that is unsalable in foreign markets, and are adamantly against funding criteria that is tied to the subject-matter or cultural relevance of the product to be created and distributed.

Paul Audley19 has pointed out that implements of cultural policy implementation must be direct and not "cultural policies by default" targeted at foreign competition. Foreign competition is not the cause of Canada's cultural frustrations. Audley stresses that the grip of foreign product over the Canadian market is caused by the creation of expensive "blockbusters" that consumers prefer and that trade protections and financial incentives that facilitate industrial competition do not, inherently, address the issue of creating and distributing culturally relevant product in Canada. Audley has admitted that "input" criteria for financial assistance under Canada's tax laws is an inefficient and haphazard mechanism with which to achieve cultural policies, and that, "adjustments to the capital cost allowance will never be sufficient to achieve the cultural objectives or the basis of which film policy initiatives have been justified."20 As well, Lyon and Trebilcock have rejected the argument that trade barriers (i.e. direct investment restrictions) are an efficient and effectual means of promoting the optimal quality of indigenous Canadian films, and conclude their review of this issue as follows:

> ... tenuous is the argument that heavy degrees of concentration and foreign ownership, particularly at the distribution and exhibition levels of the feature film industry, preclude the production and screening of an optimal quantity of indigenous Canadian films.21

The 1982 study of C.G. Hoskins and S. McFadyen22 also argues that the content regulation of the private sector media, including ownership criteria, is an inefficient and haphazard means of ensuring the creation and distribution of culturally relevant material in Canada. Their study points out that there is private corporate aversion to content regulation, ownership restriction, and profit motives in the market, and that such aversions make "private media industries" insensitive to the cultural content of their product - they want product that creates high rating and audience attendance, and not material that is culturally relevant for its own sake. Therefore, the study recommends that cultural objects are more directly and efficiently achieved by the deregulation of private media and the concomitant financial bolstering of state owned media and direct cultural incentives that would lead to the production and distribution of product created under the criteria of cultural, not financial, relevance. That study submits the following critique and recommendations in this regard:

> CRTC conduct regulation of the private sector has failed and ... Canadian content rules are not the solution (to promote Canadian culture). We thus advocate deregulation of private sector broadcasting in Canada. <u>Supernormal profits exist in broadcasting at present</u>; these profits could be expected to increase initially as a result of deregulation. (A) special profit levy ... would provide a mechanism for directing those resources

> into the production of Canadian programming.... Given the influence of television (the average Canadian spends about 22 hours a week watching), government investment in the CBC is likely to show a greater return in the quest for Canadian culture and identity than any investment of similar size elsewhere.23

As well, A.E. Boardman and A.R. Vining24 have concluded from their comparative analysis of the Canadian Broadcasting Corporation and the British Broadcasting Corporation, that the imposition of a trade restriction, such as content quotas, "is likely to reduce the production quality of Canadian content programs, and therefore, consumer demand." The loss of consumer demand is the loss of a market interested in culturally relevant product, which has cultural and economic implications. Such studies argue that the results of the present policy implements may cause more harm than assistance toward the realization of Canadian cultural policy objectives. In addition, Jonathan Kahn (infra) has made the following conclusions in this regard:

> Canadian content requirements have been unsuccessful as a policy tool because they attempt to regulate demand ... the quality of these programs will remain low because their exhibition will simply be a cost of doing business for the broadcaster.... Thus, Canadian content quotas might actually hurt the cause of Canadian artists. If Canada's government is going to interfere in the market, it would seem more effective to intervene on the supply side ... to help Canadian artists produce and market quality broadcasts ...it is pointless to maintain policies not only antagonize one's neighbor, but also prove completely ineffective in reaching the policy goals that have been set out for them.... These policies do nothing, in and of themselves, to promote Canadian culture- they are simply barriers intended to protect the Canadian broadcaster ... these barriers are economic ends in themselves, for they do nothing to reach their social/cultural goal.

Jan Wong has reported25 that recent surveys26 reveal that most Canadians oppose trade restrictions on the cultural products they prefer, as follows:

> **Most Canadians do not care if their radio, newspapers and magazines fail to reflect a Canadian point of view, according to an extensive public opinion survey. While they fret about U.S. television exerting too great**

an influence on the Canadian way of life, most Canadians apparently oppose any form of cultural nationalism that would deprive them of their favorite U.S. shows. It found that, despite the sometimes impassioned debate over foreign ownership of Canadian media, many Canadians are unconcerned about it. But it found that Canadians are willing to support "limited" Government expenditures to ensure the availability of Canadian cultural products. "It's a question of quality over nationalism," said Hugh Dow, senior vice-president of MacLaren Advertising, which conducted the survey with Environics Research Group Ltd.27

The Stratavision Report28 pointed out, as an adjunct to its industry profile, that any abuse of dominant market position that the Canadian industry may be suffering is not an international trade issue, but an issue of direct domestic regulation where all industry members are given equal domestic treatment. International trade protections that afford discriminatory economic benefits in the name of "cultural interest" are generally inefficient and unsuccessful implements of cultural policy. It has been argued that the elimination of economically powerful competitors from the market place, for example, only allows domestic corporate interests to abuse their dominant position in place of foreign abuse. Rather, the more direct and efficient response to such a problem should be directed at the abusive action itself rather than the irrelevant factor of national identity. Indeed, it is argued, that restrictions on foreign traders in the domestic market only allows domestic interests to carry on the conduct of foreign traders that was targeted as incompatible with domestic cultural policy objectives. For example, in its recommendations, the Stratavision Report pointed out the following:

> (Cineplex) ... is using its vertically integrated position to strengthen the role of Pan-Canadian in the Canadian market for independent properties .. exercising its integrated bargaining power against independent distributors ... (which) is likely to have serious negative implications for the remaining Canadian independent distributors.29

A study undertaken by Jean-Luc Migue for the C.D. Howe Institute30 concluded that protectionism of cultural industry, generally, may inefficiently help financially but do very little for the cultural interests of the nation. Migue pointed out that resulting higher consumer prices, slower industrial growth and poorer quality of product all result from the present regime of "cultural" protectionism with the effect of "turning Canadians away" from the culturally relevant product the policies were ostensibly intended (if not actually designed) to promote. Migue's following summary of his conclusions in two areas of cultural industry protectionism is particularly instructive:

> **Quotas on Radio and Television**
>
> The Canadian consumer is the first, and prime, victim of quotas set on radio-television channels and programs, since the artificial constraints established by legislation restrict consumers' freedom to choose the programs they wish to watch. Both the quality of programming (as evaluated by the listener, and not by CRTC bureaucrats or by art critics) and its variety are reduced. Furthermore, the price the consumer must pay for this inferior service is increased. Television and radio enjoy unlimited scale economies: one more listener usually adds nothing to production costs, so marginal cost is, in effect, zero. It follows that, by artificially compressing the market, the regulator increases the production cost per listener. This is shown in higher per-viewer rates charged to advertisers and in the losses of public broadcasting agencies.
>
> **Implicit Tariffs on Foreign Magazines**
>
> Magazine readers in Canada pay for discriminatory tax treatment of foreign publications. They receive either a product (the magazine) of lower quality or a product of the same quality at a higher price. Because of the limited size of the market, no Canadian firm can compete with such large international magazines at Time in terms of production costs, with the exception of newspapers and publications of local interest. These scale economies mean that production of a Canadian edition of a U.S. (and, to a lesser extent, a French) magazine costs much less than the publication of a magazine destined solely for the Canadian market. The large contribution of fixed costs to total costs means that the same situation pertains for most artistic activities, including music, ballet, and opera.

The study undertaken by Lyon and Trebilcock31 also concludes that the present regime of cultural support programs for feature films is so inefficient and ineffectual at achieving their cultural objectives, that such protections do far more to put money in the pockets of "cultural" entrepreneurs than to promote Canadian culture. For example, their study points out that the 100% capital cost allowance program for film production in Canada led to a small increase in employment and foreign investment in Canada, while the vast majority of films produced under that incentive were of very poor quality and never distributed. As well, since very few made a profit, the government had no tax revenues to offset the cost of their tax incentive program. In addition, the tax losses claimed were much greater than the government estimate of thirteen million dollars because the amount of private investment far exceeded that amount. Their study points out that there is no evidence as to whether or not any profits or tax savings led to any reinvestment into the film industry, nor to show how the resulting shift of public revenue to private investors contributed to Canadian culture. Their study argues that the financial support of the Government for cultural policies should be direct and rational. The authors propose that financial incentives should be tied to culturally relevant criteria that can easily justify public expenditures. Such "output" criteria, they argue, will tie public expenditures to the creation of culturally relevant product, whereas, "input" criteria only serves to publicly fund projects that are irrelevant to the content of the final product, and its contribution to Canadian cultural policy. However, as discussed in the previous sections of this Chapter, the study points out that the financial interests of the industry may conflict with Canada's cultural policy objectives as per the following assessment:

> Abandoning input qualifications would likely alienate the industry's Canadian employees and investors, who derive substantial material gains from the present policy.32

Lyon and Trebilcock's research conclusions were entirely supported by the subsequent Australian Film Commission study which was unequivocally critical of tax shelter incentives to promote the creation of culturally relevant films and advocated a return to direct state funding on the basis that a film must have "significant" Australian content.33

Richard Lipsey's study34 points out that blanket trade restrictions are an inefficient means to achieve specific cultural policy objectives and that restrictions on foreign competition is a scattered approach to promote the cultural well being of Canadians. Dr. Lipsey argues that distributors, exhibitors and producers of culturally relevant product can overcome market disadvantages with more direct and efficient mechanisms than throwing money at the problem and into the hands of a select portion of the industry.

Steven Globerman35 argues that the present range of 'cultural' programs are far more successful at increasing the financial wealth of owners of broadcast companies, film distribution operations, etc. than they are at promoting the creation of product that Canadians can culturally identify with. Globerman points out the inefficiency of interventionist policies in the following comment:

> In the absence of some clearer understanding of how the production of 'Canadian' culture promotes national (cultural) defense, interventionist policies, to date, are subject to the criticism that they are, at best, haphazard and potentially grossly inefficient.36

Even the most ardent advocate of industrial interests in favour of maintaining industrial input criteria for the maintenance of "cultural" trade restrictions will express regret that millions of dollars of Canadian public funds are spent annually on culturally irrelevant films for the United States mass market while the CBC cannot afford to broadcast the live investiture in 1986 of the second Nobel Prize ever to be received by a Canadian in the physical sciences; awarded to Professor Dr. John Polanyi of the University of Toronto.

(iv) Protectionism A Detriment To Culture: Not only have scholars argued that the present regime of "industry programs" do not achieve their cultural objectives, but that they distort international trade and market performance to the detriment of Canada's cultural interests.

Millard Roth, the executive director of the Canadian Motion Picture Distributors Association, has argued that trade protections eliminate competition and the sharing of technical innovations that both contribute to the formation and maintenance of industrial infrastructures. Roth has made the following assertions in this regard:

> Government subsidies create competitive advantages and are put into place to make or create competition with American companies based in Canada, ... Investment Canada is much more serious. Companies that employ and train people, pay their taxes and are good corporate citizens, are all critical aspects to the long-term health of the business. And efforts to exclude them, I believe, puts the infrastructure at risk.37

The Applebaum Report38 acknowledged that "cultural assistance programs" may have particular economic benefits to Canadians while actually being detrimental to Canada's cultural well being. That report admits that film production tax shelters and public financial assistance for film product have not, despite their activities over fifteen to twenty years, contributed to the production and distribution of culturally relevant product in Canada.39

The Stratavision Report admits that although public funds continue to be sunk into industry pockets, the stream of funding may be causing more harm than good to Canadian culture. For example, it explains that film tax incentives have not produced the desired cultural results. The study points out that Canada's film distribution industry is highly vertically integrated, non-competitive, with the bulk of its revenues centrally controlled by both American and Canadian corporations. However, the study points out that while "cultural incentive programs" have added to the economic prosperity of Canadian corporate owners, such programs have had a negative impact on the creation of culturally relevant product. For example, that study makes the following assertion:

> These trends ... have been exacerbated by government policies which through the 100% capital cost allowance discourage Canadian producers from seeking distributor participation in the production of theatrical properties and which have contributed to the overall decline in the production of theatrical properties.40

Steven Globerman has also argued that such programs are not rationally designed and evaluated for their ability to achieve cultural objectives, and thus distort market activities that eventually cause great harm to the cause of Canadian cultural expression. One example used by Globerman is the government's use of tax incentives for film production investment, and he makes the following observation in that regard:

> The 100 per cent Capital Cost Allowance stands as a monument to irresponsible policy making and comes as close to being a pure taxpayer "rip-off" as one is ever likely to find. The bizarre feature (to us) of the policy debate to date is its focus on which personnel categories should benefit from increased film activity and not on whether any market failure issue is addressed (or even potentially addressed) by the Capital Cost Allowance. Our own assessment is that no market failure issue is at stake in the feature film industry. The experience of the feature film industry in Canada suggests that whatever Canadian content is, it is not the outcome of feature film production. Indeed, the expansion of the feature film industry -- and the consequent bidding up of factor prices-- makes it more expensive for documentary and experimental filmmakers to produce their output.41

In pointing out the irrelevant nature of input criteria to the achievement of cultural objectives in the film industry, Globerman reviews the increase of investment in Canadian film production from 1977 to 1980 (inclusive) associated with tax incentives and government subsidies, and concludes that very little impact on

Canada's cultural identity can be seen since the "output" of such film's cultural relevance to Canada was negligible.42 Globerman relies on the example of tax incentives to reveal the economic waste and detrimental effects of such culturally irrational programs as follows:

> Presumably, the purpose of the Capital Cost Allowance was not to stimulate an increase in feature filmmaking per se but to encourage an increase in feature films contributing to a heightened sense of Canada's identity ... virtually all agree that the bulk of the feature films produced under the Capital Cost Allowance did not contribute to promoting (Canadian) awareness.... Indeed, many recent Canadian films took great pains to disguise their Canadian origins, for example, by disguising Canadian locales as U.S. cities. The "Americanization" of the product produced under the Capital Cost Allowance should have come as no surprise to policy makers.43

The conclusions of Richard Lipsey's study endorse and support such insights. Lipsey uses, as his example of the inappropriate and detrimental waste of public funds under the present regime of trade protection for cultural industries, Bill C-58 that created a tax incentive to sponsor Canadian radio and television stations. Lipsey points out44 that the tax incentive only contributed to about 4% of the total revenues of all affected stations and that only economically marginal stations have been assisted by the program. Therefore, the program supports inefficient stations that produce product not supported by the market and provides an "income bonus" for stations that would have survived anyway. As well, the program led to United States retaliation in 1984 which reduced the American subsidy to advertisers of Canadian marginal stations and thus hurt Canadian border stations that had been successful in penetrating the United States market - thereby closing a door of market access for Canadian artists. Lipsey notes that the program was an expensive way of hurting Canadian artists while putting money in the hands of station owners with little cultural benefit to Canadians. Lipsey concluded that, "Considering the wealth of the owners, this was hardly a transfer of income from rich to poor!"45

(v) <u>Income Concentration At Cultural Expense</u>: Dr. Lipsey's concern that trade protectionism undertaken in the name of culture has more to do with the economic interests of a vocal few than with true cultural nationalism are echoed in other studies and by other scholars in this field. Jean-Luc Migue has argued that the reason industry lobbyists wish to retain culturally (and sometimes, economically) inefficient and detrimental policies, is because those policy programs are successful in transferring income to lobby members - regardless of the lack of cultural impact from such a transfer. Migue argues this point in the following terms:

> Protectionism ... imposes net costs on an economy. Protectionist measures generate inefficiencies.... <u>If these measures were merely inefficient, they would not have been adopted,... But they are adopted against foreign competition because, even though they penalize the majority, they transfer income to certain groups....</u>46

In their critique of "nationalism" as the rhetoric of private interest lobbying, Chant and Breton47 make the following comment that supports the argument that economic transfers from the poor to the rich occur regardless of a "nationalistic program's" failure to achieve any nationalistic policy objective:

> ... the pursuit of nationalist objectives would lead in Canada to a transfer of wealth from the poor to the rich ... it (is) correct to assert that in Canada, nationalism transfers resources from the poor to the rich. The evidence we have, I think supports this view. The few studies that have been done point in that direction ... the evidence we possess is that the implementation of nationalistic objectives will operate to transfer wealth from the poor to the rich.

Steven Globerman's research conclusions most adamantly warn against allowing the rhetoric of "cultural nationalism" to legitimate ineffective cultural programs that serve only to concentrate wealth in the hands of Canada's industrial beneficiaries. Globerman cites Migue's study to make the following assertions:

> One relatively recent analysis of the nationalism phenomenon in Canada argues that when nationalism gives rise to protectionist policy measures, overall economic efficiency suffers in the region imposing these measures. The thrust of protectionism comes from those who would benefit from it, and protectionist policies are adopted at the expense of others although the rhetoric is couched in terms of the "national interest".48

Globerman's research results supports Migue's conclusions, and endorses their relevancy as a fault of trade protectionism in the context of the cultural industries. In this regard, Globerman's study states the following conclusions in profound criticism of both the legitimacy and intentions of cultural industries' reliance on "cultural nationalism" as the vanguard of trade protectionism:

> ... the redistribution does not go from the well-to-do to the poor, but from broad segments of society (including the poor) to a relatively narrow group of well-educated, usually middle-class, politically active, "opinion makers" in society. <u>In the Canadian context, and with respect to cultural intervention specifically, it has been argued that the main beneficiaries have been and continue to be a select group</u> of performers, producers, and technical personnel, while the bulk of <u>the Canadian population has been burdened with higher prices for the cultural services they consume and with a restricted choice of cultural output</u>....49
> <u>Our overall review of cultural intervention</u> in Canada <u>suggests that</u> many, if not most, of <u>the major interventionist instruments in Canada fail to promote broad public policy objectives</u>.... Indeed, some of the <u>prominent effects of cultural intervention can be criticized as clearly being anti-social in nature</u>, such as redistributing income from poorer to wealthier members of society ... the imposition of policies that <u>serve no obvious social function</u> but, rather, benefit a small number of individuals who assume certain costs associated with <u>lobbying for their favoured policies</u>.50

Ted Rogers, chairman of Canada's largest cable television broadcast network Rogers Cablesystems Inc., has admitted that the position of cultural industry lobbyists has nothing to do with cultural motivations, and everything to do with building economic dynasties, as per the following report of Edward Greenspon:

> But Ted Rogers, chairman of Rogers Cablesystems Inc., thinks it is his Canadian business colleagues, not their American counterparts, who are being unreasonable when it comes to free trade and culture ... As he sees it, protectionist measures result as much in "the enrichment of dynasties" as the promotion of culture. "The problem is when you get to the big boys. Does the money go to Canadian programming? Does it go to bid up American programming? Or does it go for profits? There's no allocation of that revenue for Canadian programming, no direct allocation. "They're not cultural czars, Bassett and the other fellows. If it was cultural they wouldn't give a shit. In other words, if it was all going into Canadian programming, who cares as businessmen? "That's why they're so worked up; because it affects their business, their profits will go down. It isn't just Canadian content that will go down."51

(vi) Cultural And Market Conflicts: Despite the assertions of industry lobbyists that American corporations do not distribute culturally relevant Canadian product because they treat Canada as part of the U.S. market, and despite their assumption that Canadian corporations will behave differently and contribute to the creation of culturally relevant product, many argue that Canadian corporations make production and distribution decisions on the same commercial basis as foreign corporations and that Canadian corporations are most active in creating product that is of no cultural relevance for Canada for sale in the U.S. market. As well, Canadians who seek access to the U.S. market, want to sell their U.S. distribution rights to U.S. corporations, even though such U.S. corporations insist on purchasing the Canadian rights as well. It is argued that it is the financial interests of Canadian cultural industries that lead to the creation of product of primary interest to U.S. audiences and the sale of Canadian rights to that product to U.S. corporations that has led to the dearth of culturally relevant material in Canada. The Lewis Report describes the motivations of Canadian industry in the following terms:

> The greatest barrier to stability for Canadian distributors is generally agreed to be the difficulty to obtain the rights for any potentially lucrative properties for the domestic theatrical market. This is the result of the practice of American companies distributing their own films in Canada and the practice of American companies automatically acquiring

> the Canadian rights to agreements negotiated with independent producers for American distribution. Most Canadian distributors agreed that they were unable to maintain control of Canadian product in the Canadian theatrical market. In order to acquire access to the American market, a Canadian producer is often obliged to sell full North American theatrical rights to an American distributor. As a result, the most promising Canadian films are often distributed in Canada by American companies and are, therefore, unavailable to Canadian distributors.52

There is nothing surprising in the commercial behaviour of an industry that creates and distributes product primarily for financial gain and not for the cultural contribution that the product will make to Canada. Business is business, and the vast majority of product created in Canada is made on the basis of that product's salability in a foreign market. Product that is culturally relevant to Canada that is not financially viable in another jurisdiction will not be made in favour of utilizing production facilities to make product for the greater gain in international markets. Canadian producers, like foreign producers, treat the United States and Canada as one market. It is therefore argued that if Canadians owned and controlled all Canadian production and distribution facilities, decisions concerning what product to make and distribute would <u>also</u> be based primarily (if not exclusively) on financial considerations related to U.S. market viability. In a sense, the commercial basis of industry behaviour is not distinguished by nationality, as can now be seen in the increased vertical and horizontal integration of Canadian producers who are adopting dominant market structures that Canadian industry argues, in relation to foreign corporate activity, is so harmful to the Canadian market. The Lewis Report points out that all commercial interests behave the same way, and make the same financial decisions, despite their national origin. That Report expresses concern that public funding and subsidies are fuelling the replacement of U.S. conglomerates with Canadian conglomerates that will do nothing to alleviate the present abuses of dominant position that now threatens the "financial" stability of the industry:

> The issue of vertical integration is achieving greater importance. Cineplex-Odeon/Pan-Canadian, as a Canadian "Major", operates as other Majors. The marketplace is becoming less hospitable for smaller Canadian firms. Vertical integration constitutes a very formidable roadblock for the industry as a whole. The financial stability it affords those few firms able to achieve it, comes at the expense of all the smaller firms denied access to products and screens.53

It is argued that culturally relevant product is now, and will be, made by all industry participants on the basis of financial viability which includes U.S. market access - irrespective of national origin of corporate decision makers. Steven Globerman has argued that the uniform market objectives of the Canadian industry has promoted a "Hollywood strategy toward filmmaking"54 despite the United States' competitive advantage. Globerman argues that the primary objective of profit maximization of cultural industries blinds decision makers to the cultural relevancy of product produced and distributed, as follows:

> These organizations can therefore be expected to use increased public funds to increase long-run profitability.... Long-run profit maximization could encompass profit-oriented Canadian cultural organizations using public subsidies <u>to produce output geared primarily for the U.S. or other foreign markets</u>. It could also encompass such firms reducing expenditures out of their own capital concomitant with an increase in public funding ... a general attempt by profit-oriented organizations to expand output could lead to factor prices being bid up significantly, <u>thereby dampening, if not eliminating, any actual expansion of output</u>."55

Robert Fulford describes the attempts of industry lobbies to argue that their domination of the Canadian market will lead to the creation of culturally relevant product as "dubious at best" and "self-interest buck-passing" in his recognition that the behaviour of Canadian industry will depend heavily on U.S. market access, and not "cultural" relevance. Fulford has made the following comments on this point:

> Last November the federal task force on the film industry, co-chaired by Marie-Jose Raymond and Stephen Roth, both film producers, declared that a major reason for the failure of Canadian films was American ownership of the distribution companies. The task force recommended "that the distribution of films and videos in all medias [sic] in Canada be by companies owned and controlled by Canadians" and that the government pass laws and regulations to that effect.
>
> This idea is dubious at best. Canadian movie theatres are already extensively owned by Canadians, and the largest chain, Odeon-Cineplex, is linked to a distribution company, Pan-Canadian. If Canadian films are not adequately distributed, the problem can't be laid entirely at the feet of the Americans ... The Raymond-Roth report looks like self-interested buck-passing, but it's been handled in the press as another stirring patriotic document. The Globe and Mail's Carole Corbeil, for example, discussed it with reverence, and the Edmonton Journal - never famous as a hotbed of nationalism, until now - declared, "Canadian films would have a fighting chance of being seen in this country if the tough nationalistic measures recommended in a recent federal task force were carried through."56

The "dismal record"57 of Canadian private broadcasters to produce and broadcast culturally relevant product is very much a product of those broadcasters' response to market demand and profit motivations, and an indication of their real commitment to Canadian culture.

(vii) Reduces Competition: It is argued that the long term interests of Canadian culture demand a high standard of quality that will be accepted by the domestic market. Economists warn that any trade protections that affect product quality, will push the Canadian and foreign markets away from Canadian products, and damage the long term interests of Canadian culture. One detrimental effect of financially supporting cultural industries by trade protectionism sighted by researchers is the reduction of competition in the market place. Richard Lipsey58 argues that restrictions on competition via trade barriers insulate and protect Canadian producers from competition, "and thus allow it (i.e. cultural industry) to sustain itself even if it became inferior to the foreign product on all counts."

The Stratavision Report, designed to "provide ... analysis necessary to assist the Minister, the Department (of Communications) and the recently announced Task Force (Roth Report) in identifying ... (policy) options",59 warned of the negative effects of the present regime of industry incentives on industry concentration and competition in the following terms:

> ... given the nature of the film and video market, substantial incentives to engage in risk-reducing behaviour ... exist. These incentives ... have structural implications leading to vertical integration, segmentation and a significant reduction in competition.60

Steven Globerman61 has further warned that the anti-competitive influences and effects of trade protectionism in the cultural industries result in higher prices for domestic product, poorer quality of domestic product, the continuation of relatively inefficient producers, and a limitation of choice for consumers. Globerman points out that consumers will be alienated from Canadian products and their producers, and that the dissemination of culturally relevant material will become even more difficult. The effects of competition reduction in the market are described by Globerman in the following terms:

> This serious infringement of freedom of choice on the part of the federal government (i.e. content regulations) should be of great concern to all Canadians.... At the least, Canadians should expect a persuasive argument for accepting limitations on their freedom of choice in the area of cultural activities.62

Furthermore, Globerman makes the following assertions:

> ... a survey of literature on the economic effects of protecting domestic producers from foreign competition suggest that where the domestic industry is highly centralized in ownership ("oligopolistic"), foreign exclusion may facilitate domestic collusion with a likely increase in prices paid by domestic consumers and permitting inefficient firms to continue, again increasing the cost of the product to domestic consumers.63

(viii) <u>Cultural Relevancy</u>: In his 1979, Juno Award Speech, Prime Minister Trudeau advised Canadians that if "you want songs of Canada, (sing) from the heart of Canada." Trudeau argued that Canadian artists should be publicly supported for their contribution to Canada's cultural identity and character. He suggested that the conduct of artists and businessmen is irrelevant to Canadian culture unless it helps achieve and secure unity, and Canadians' common identity and heritage. In that regard, Trudeau quoted the following criteria from the Broadcast Act:

> ... national broadcasting ... must contribute to the development of national unity and provide for a continuing expression of Canadian identity.64

In this vein and spirit, the Applebaum Report tacitly recognized the distinction between cultural and economic protectionism in this sector and the failure of present trade protections to be primarily concerned with cultural objectives. Recommendation #61 advised that government financing of Canadian film and video production should be expanded "on the basis of their <u>cultural value</u> and professional quality."65 As well, the Applebaum Report advanced the following proposal:

> Some genuine emphasis in government policy must be restored to the words "good" and "Canadian".... A Canadian film policy structured along these lines would recognize, in fact, what has long been acknowledged in theory - namely, that <u>such a policy is motivated by cultural goals and only secondarily by industrial or commercial ones</u>.66

David McQueen67 has criticized the Applebaum Report's uncritical reliance on traditional economic theory to make the 'leap-of-faith' assumption that the financial ability of the cultural sector to contribute to Canadian cultural identity will therefore actually lead to the creation of culturally relevant product. McQueen argues that economic theory must be analyzed and interrelated with desired cultural policy objectives to ensure that appropriate and efficient economic policies that secure cultural objectives are implemented. McQueen provides the following critique of the Applebaum Report's reliance on narrow economic theory that is related to cultural policy objectives in "desire" only:

> This note deals with the ... Report of the Applebaum-Hebert Committee. It reflects an economist's point of view, but not only that. Economists who interest themselves in the economics of culture normally do so out of a prior interest in culture, and merely make themselves ridiculous if they subsequently affect to execute a sort of professional troll's dance on the economist's leg only.

The extreme lack of cultural relevance of present trade restrictions in this sector is widely recognized. Paul Audley, a strong proponent of cultural protectionism, argues that present "cultural" programs have more to do with the economic development of an infant industry than with the objective of benefitting the quality and content of Canadian product such as films. Audley provides the following assertion in this regard:

> ... the way in which (U.S.) films enter the Canadian market is the key determinant of industry structure. If they enter through directly controlled subsidiaries, then those subsidiaries will control the Canadian marketplace ... there should be no new foreign ownership in the film industry ... then a reasonable share of profit made from distributing foreign films in the Canadian market will be in Canadian hands.... However, this does not mean that Canadian films will necessarily benefit greatly from such a change ... (but) their dominance of film distribution in Canada is not compatible with the development of a strong Canadian film production industry.[68]

As previously noted in this research paper, the confusion of industry lobbyists over cultural relevancy and economic protection is profound. Commercially successful product that has no unique cultural relevance to Canada whatsoever, is used as basis for justifying the financial support of the industry on cultural grounds. For example, The Fox Report69 argues that public financial assistance for film production in Canada should increase, and that financial assistance should be premised upon "input" criteria that are all "industry relevant", e.g. employee nationality, shareholder nationality, filming location, nationality of copyright owner, etc. The Fox Report then makes the quantum leap of identifying such input criteria as culturally relevant. Films that are intended for the mass U.S. market and have nothing to do with Canada's cultural heritage and identity are used in the Fox Report as examples of cultural, successes to justify increased industrial subsidization. At page 20 of the Fox Report, the following is advanced:

> **Building A Canadian Film Culture - The Private Sector Contribution:** There are a number of reasons for supporting Canada's private film and video industry.... The industry has ... made a number of excellent and culturally significant movies reflecting the Canadian experience.... Ticket to Heaven was well received by critics throughout North American ... the Canadian industry had won an Oscar for best documentary with The Man Who Skied Down Everest ... Porky's has earned more money than any other Canadian film and is now the 16th longest grossing feature in world movie history ... Quest For Fire and Heavy Metal did very well at the box office.70

Critics of the industrial lobby's abuse of "cultural nationalism" fail to understand the cultural justification for public expenditures to produce a documentary (The Man Who Skied Down Everest) about a Japanese adventurer that skis down a mountain in Nepal -especially where such discriminatory expenditures are trade irritants that jeopardize wider trade liberalization with the United States. In his speech to the Petroleum Accountants Society of Western Canada, Calgary Herald's publisher J. Patrick O'Callaghan made the following comment:

> Of all the possible impediments to a free-trade agreement, it is the concern over cultural identity that haunts me the most. How many reruns of Wayne and Shuster do we have to endure? ... And if it comes to a choice between Porky's and our survival as a trading nation, I know which I would choose.71

Jonathan Kahn has argued72 against the use of industrial criteria to achieve cultural objectives, on the basis that industrial criteria are not capable of achieving unrelated policy objectives. For example, he cites the work of Petty and Allebes entitled, "Resurgence of Canadian Nationalism"73 and adopts their following assertion:

> In essence, the Canadian content quotas are "make work" projects, with credit being given for what is in reality man-hours of Canadian work rather than for artistic merit or communicative effectiveness.74

As well, Kahn quotes the following admission of the CRTC that its industrial content requirements are not appropriate instruments with which to achieve cultural objectives:

> Canadian social and cultural objectives are seldom compatible with commercial parameters and Canadian content requirements are seen as the price to be paid for obtaining and holding a license.75

Lyon and Trebilcock76 argue that "input" criteria are irrelevant to cultural content and that only "output" criteria can be relevant to ensuring that cultural policy objectives are promoted. In a separate study, Trebilcock, et al.,77 recognize that replacement of subjective "output" criteria for objective and well established "input" criteria is problematic.

Steven Globerman's research conclusions are also highly critical of cultural justifications for the continued public subsidization of industry product that does nothing to contribute to national unity, identity, heritage awareness, or culture. Globerman makes the following arguments in this regard:

> ... it is unclear why such ventures ('Hollywood style' features) should be promoted at public expense, any more than Canadians should be expected to subsidize the growing of bananas in Canada.... Where the content of the cultural product produced in Canada is indistinguishable from that of products produced in the United States - as it often is - it is especially difficult to understand the social purpose that is served by government promotion of its production.78 Cultural nationalists ... promote 'Canadian' culture. Specifically, they argue along the lines that 'Canadian' culture is required to promote Canada's sense of 'identity'.... In practice, the determining criterion is the identity of those individuals involved in the production and distribution of the cultural event. Non-Canadians presumably cannot provide Canadians with the unique insight about the human condition in Canada that other Canadians can.79

(ix) Competitive Efficiency and Firm Size: Despite the assertions of industry lobbyists that trade protections are required to ensure the countervailing power of the Canadian industry, the foregoing points out that such trade protections reduce competition in the market place and lead to the centralization and agglomeration of wealth in the industry. As well, it has been argued that the Canadian industry is better positioned for economic efficiency and the production of less commercially but culturally relevant product if composed of smaller, less capital intensive firms. The argument is advanced that more culturally relevant product can be produced by smaller firms that can operate on low budgets and cash flows, rather than by the large, highly integrated firms that produce commercial product primarily for U.S. markets. As present trade protections promote the latter, it may be argued that such programs favour the economic interests of an industrial lobby rather than the interests of rational policies that promote competition, efficiency, specialization and the production of culturally relevant material. Steven Globerman argues that the trend toward financially bolstering large Canadian corporations into positions of countervailing power is the wrong approach for promoting cultural production, as follows:

> This protectionist argument relies on the notion that specialization is of limited value as a competitive tool. This notion has been rejected by critics of the domestic tariff and might also be rejected in the production of culture ... there is substantial evidence that smaller Canadian production units can compete successfully in specialized production markets.80

(x) Industry Programs Are Trade Barriers: Despite the assertion by industry lobbyists that the active involvement of foreign traders in the Canadian market is evidence that industry trade protections are not trade barriers, a range of programs do operate as both trade barriers, and as mechanisms that distort the domestic market and prevent it from achieving cultural objectives.

The trade restrictions discussed in Chapter III of this research paper are widely complained of by foreign competitors to have trade inhibiting effects.

Edward Greenspon has reported that the Motion Picture Association of America is particularly upset with investment restrictions and quantitative restrictions that discriminate on the culturally irrelevant criteria of national origin and not on cultural criteria that reflect the basis of justification for such trade barriers. The economic purposes of such barriers are addressed by him as follows:

> But such measures as restrictions on investment in cultural industries and Canadian content quotas are regarded as unfair trade practices by the U.S. entertainment industry. "It is clear that despite the claims of 'cultural sovereignty,' the purposes and effects of these barriers are primarily economic," the Motion Picture Association of America has told Congress. Whether the primary motivation is cultural or economic, a number of powerful Canadian interests do have a great deal at stake in the debate over culture and free trade - industries such as broadcasting, film and television production, ... But does it add up to protecting Canada's cultural sovereignty? After all, nobody in the free trade negotiations is agitating to remove government support for less commercial cultural pursuits - opera, symphony, ballet.81

It is argued that the continued success of foreign product in the Canadian market is a result of extreme market popularity despite such trade barriers. The popularity and success of foreign product in Canada is a testament to its market superiority over domestic product - domestic product that many argue is inferior because of the distortions caused by the irrational, inappropriate and inefficient economic programs ostensibly intended for cultural objectives.

(xi) Fostering U.S. Protectionism: The industry lobby advances the argument that because the United States market is relatively open to Canadian cultural industries, such industries will only lose from a critical examination of their financial support programs. However, such narrow and selfish sectoral perspectives inhibit wider trade liberalization while adding nothing to the cause of protecting rational and efficient cultural programs. Rather, attempts to disguise economic protection under the veil of cultural sovereignty only damages legitimate attempts to ensure that programs that are truly cultural in design, intent, and function remain unassailable domestic priorities. As well, "industrial" or sectoral exemptions that protect economic trade barriers lead to retaliation and increased foreign trade barriers. It may be argued that the narrow economic interests of a few should not put the wider economic benefits of trade liberalization and the protection of legitimate cultural programs and protection at risk. Alan Rugman, in his article entitled, "U.S. Protectionism And Canadian Trade Policy"82 provides the following warning to Canadian industries:

> The escalation of U.S. contingent protectionism is a troublesome development for those concerned with both bilateral and multilateral trade relations. More and more actions are being brought to the ITC. Its chairperson, Paula Stern, reports a 22 per cent increase alone in fiscal year 1985. She also states that "less than 5 per cent of U.S. imports were challenged before the ITC" in 1985. Far from the benign interpretation she gives, this is startling confirmation that 5 per cent per annum of U.S. imports are being subjected to costly U.S. trade review. Even

> with no further escalation, over a ten-year period we would expect half of all U.S. imports to fall under the gun at the ITC. From Canada's viewpoint the application of current U.S. trade law will prove to be an unmitigated disaster if current trends continue. Canada is extremely vulnerable to U.S. countervail since its exports are concentrated in relatively few resource-based sectors.

(xii) Trade Liberalization Fosters Cultural Activity: The argument has been advanced that the wider economic prosperity of freer trade with the United States will greatly contribute to the domestic economic security that promotes cultural creativity. As previously noted herein, Canada's External Affairs Minister, Joe Clark has stressed the point in the following terms in his address to the Foreign Policy Association in New York on November 18, 1985:

> As we enter trade negotiations, some in Canada are extremely concerned with the effect these negotiations might have on Canadian cultural industries and therefore on our ability to express and develop our national sovereignty. I respect their concern. Two questions are at issue. One is the vitality and support of Canadian culture. The second is the negotiation of trade rules that might affect cultural industries. We distinguish between these questions. ... no country in the world is more committed than Canada, to making the rules of international commerce more transparent and fair.... In the U.S., you cast the net of 'National Security' over more areas than we. In Canada, we cast the net of cultural sovereignty more widely than you ... But that commitment to cultural sovereignty should not stop us from seeking better trade rules for cultural industries. From Canada's point of view, better rules are both possible and desirable ... But we can make certain understandings explicit. We are prepared to discuss with the U.S. ways we can strengthen cultural industries through trade. But under no circumstances, are we prepared to agree to any measures which weaken those Canadian industries or undermine their capacity to serve our cultural needs. Canadian culture is strong and vibrant and it will grow and flourish. But I am acutely conscious that Canadian culture and the Canadian economy must grow together. Our government believes we can strengthen our cultural identity while at the same time building on our economic relationship with the U.S. That is the modern reality in Canada.83

The economic research undertaken by Steven Globerman and Aidan Vining led them to conclude that under free-trade, "most cultural industries can be expected to grow or remain constant in size ... although the nature of production activity might change within specific cultural activities."84 That study entitled, "Canadian Culture Under Free Trade", further concluded as follows:

> ... under freer trade, skills and talents will likely be redistributed from one activity to another, but the overall sector will, if anything, expand ...85 This expansion follows from the standard impact that specialization has in lowering costs in two ways: lower cost imports are substituted for higher cost, domestic products; and domestic factors of production are used more efficiently within the industry. With lower costs and prices for culture, more culture of all sorts will be consumed.86

(xiii) Government Influence: The industry lobby have argued that "output" criteria and government involvement in the outcome of media production in Canada is open to political censorship, influence and abuse and that the notion of "cultural relevance" is a subjective assessment that should be left to the market to decide without bureaucratic interference. Ironically, critics of the industry lobby use the same argument in favour of withdrawing public support from the private sector, i.e. let the market decide, via their purchasing power, what product should be seen regardless of national origin. Those critics argue that the market should be freer to enable audiences to choose between competitive products. Therefore, it is argued that "input" criteria should be abandoned in favour of "output' criteria for non-commercial projects that are judged only on the basis of broad cultural objectives perhaps as the Investment Canada regulations noted in Chapter III of this research paper, that receive industry support, are now worded. It is also ironic that industry lobbyists have no problem with government interference when that interference is in their economic interest - such as the wide "cultural" definitions in the Investment Canada Act, or the cultural mandate of the Broadcast Act. As well, if the CBC, for example, were restricted to producing culturally relevant programs, there would be less government influence over the consumption preferences of audiences, less bureaucratic involvement in a freer market place, and an increase in culturally relevant programming. Steven Globerman well articulates such concerns as follows:

> Besides constituting a significant redirection of economic resources away from other activities into the production and distribution of "Canadian" culture, government intervention into (culturally commercial activities) represents a potential danger to the freedom of expression and unbiased production of information that is essential to the survival of a free society. Canadians are entitled to a justification.... While the government's rationale for intervening in (culturally commercial) activities have been offered from time to time, close evaluation of these statements provides little basis for accepting them at face value. Indeed, an analysis of the standard agreements offered in support of such intervention suggests that many are intellectually indefensible.87

The placement of public funds into the coffers of private cultural industries is a public investment solely justifiable on the grounds of a single criteria - the degree to which such expenditures contribute to the creation of product that enhances Canadian culture and Canadians' sense of unique national identity. It is argued that all such investment must be clearly and directly tied to "cultural return" criteria.

Cultural industries are concerned that the use of "input" criteria for financial public support eligibility are unworkable because they believe that such criteria is subjective and vulnerable to political abuse. The reasons such concerns may be dismissed are organized and stated as follows:

1. Constitutional Freedom of Expression: In the case of CTV Television Network v. CRTC88 unanimous courts of the Federal Court of Appeal and the Supreme Court of Canada dismissed the argument that thematic content requirements under a federal broadcasting regulatory scheme interfered with the right of free expression. In that case, the CRTC granted a broadcasting license to the CTV network on the

condition that "39 hours of original new Canadian drama be presented (by the CTV) during the 1981-82 season."89 As well, the CRTC stated that, "The primary orientation (of such new programs) should be on Canadian themes...".90 CTV argued that such subjective, thematic content requirements for a broadcast license contravened CTV's rights of free expression. In dismissing that argument, the Federal Court of Appeal held as follows:

> It was also submitted that the condition offends paragraph 3(c) by seeking to control the content of programs and thus by interfering with the right to freedom of expression. In my opinion, there is no merit in this submission. <u>There is nothing whatever in the condition which interferes with freedom of expression within the meaning of paragraph 3(c)</u>. Even if it were possible, as I think it is not, to read paragraph <u>3(c)</u> as if it stood alone and were to be given the widest possible meaning, the condition, concerned as it is with the presentation of Canadian drama and containing <u>no restrictions on freedom of expression</u> in such drama, would not offend it.91

That decision was unanimously upheld by the Supreme Court of Canada as per the following judgment of Chief Justice Bora Laskin:

> Another submission rejected by the Federal Court of Appeal was that by seeking to control or regulate the content of programs the Executive Committee was in violation of s. 3(c) respecting the right to freedom of expression. The Federal Court of Appeal pointed out that no restrictions were imposed on freedom of expression in the drama requirements of the condition and, in my opinion, it was correct in concluding that s. 3(c) (even taken at its widest) was not violated.92

2. Political Freedom Of Expression: Even though thematic content criteria does not interfere with legal rights of free expression, does such criteria permit political abuse and control over artistic creativity and expression? It is submitted that it does not. First, in addition to the CRTC, many federal government agencies influence the thematic content of media and entertainment product without undertaking any form of censorship. The CBC, the NFB, and the CRTC are all required to remain

within general parameters of Canadian thematic relevance, and all consider the general subject matter of their products without any political interference or political censorship. Secondly, such thematic criteria is only related to broad areas of subject matter defined in apolitical terms. For example, the objectives of the Broadcasting Act are general directions concerning Canadian goals of national unity, and the CBC is directed to provide Canadians with a Canadian news perspective. Thirdly, such thematic content criteria, if adopted, would not be prohibitory in nature, but rather conditions to the provision of public funds. Therefore, the concern of political censorship in the state does not apply since financial incentives will be designed solely to promote wider cultural policy objectives. Such incentives do not constitute broad content prohibitions. For example, such incentives could not be regarded as censorship, just as government research grants, the public funding of Canadian university studies programs, and the public funding of non-profit cultural organizations in Canada cannot be regarded as any form of political censorship.

3. Government Incentives: There is nothing offensive or alien about a government relying on taxation and its powers of expenditure to promote the realization of its policy objectives. The federal government may restrict provincial transfer payments to promote a provincial policy decision that is consistent with federal government policy objectives, enact taxation laws that promote investment in a particular industrial sector, or provide funding that will directly achieve its policy objectives. The justification for such incentive schemes is that public funds should be efficiently used to achieve public policy objectives. Such incentives are purely discretionary and no citizen has a legal right to such incentives. Therefore, public expenditures in the cultural industry sector may be legitimately tied to cultural output. Therefore, the creation of general thematic content criteria for

financial incentives is very different from the imposition of laws that prohibit or restrict expression in the market place. Rather, incentive programs allow the legitimate imposition of such general content requirements within the context of mutual agreement and consent. In other terms, such government programs do not prohibit or negatively influence the creation of non-culturally relevant product; it only encourages the creation of culturally relevant product - the very policy objective that Canadian industry relies upon to justify its receipt of public funds.

4. Subjectivity of Criteria: As quoted throughout this research paper, industry representatives, government officials, scholars, and journalists all have articulated consistent criteria and bases upon which cultural industry trade restrictions are justifiable. First, that criteria is <u>not</u> qualitatively subjective; it is not value laden (e.g. "good-bad", "boring-exciting") and subject to non-quantifiable criteria. Rather, expressed eligibility criteria that is relevant to Canadian national heritage, Canadian cultural identity, stories about Canadians, their country, their history, their way of life, and the issues that affect the way Canadians live are <u>all quantifiable and objective</u>. Second, such criteria has defined limits that are ascertainable by those who seek to rely on such criteria for public support. Third, such criteria would not, in any way, impose an arbitrary power of decision making in the hands of government officials. Our entire public regulatory structure relies on such criteria. In fact, such cultural criteria is far more defined than either Investment Canada's "net benefit" test, or the vague parameters of the CBC's and the NFB's mandate. For example, recent controversy over the wide discretion of the Canada Council to decide upon artistic funding is irrelevant to the use of "output" criteria herein discussed since the Canada Council has not been given any quantitative parameters and must rely on value laden subjective criteria to decide which art is the "best" for either display or production.

(xiv) Maturity And Strength Of Canadian Culture: Canadian culture is not fragile. Canadian culture is the product of over three hundred years of history that is profoundly manifest in Canada's Parliamentary system of government, Canada's educational systems, multicultural programs, Canada's unique relationship to the Commonwealth and less developed nations, the lifestyle of Canadian cities, its geography and climate, and its social programs.93

Richard Lipsey and Murray Smith94 have responded to Canadian fears of "being swallowed up culturally" in the following terms:

> We find it hard to believe that the relatively small changes in trade policy that are being contemplated would threaten the extinction of what is distinctly Canadian about Canadians. We believe that Canadian culture is unique; that the roots of its uniqueness are set deep in the Canadian experience; and that this uniqueness will not be threatened by doing a bit more trade with the United States, any more than it would be threatened by a little more exposure to U.S. media.95

In reaching their conclusions they cite the sociological research of Seymour Lipsett96 and assert that Canada's culture is not a fragile commodity and that it can withstand far more than the negligible influence, if any, of foreign corporations owning their own film and video distribution companies in Canada.

In his article entitled, "Canada Reorders Priorities"97 Hugh Sandeman criticizes the cultural insecurity of Canadians that fuels the industrial exploitation of cultural nationalism. Sandeman puts the issue in a global, multicultural context as follows:

> The old Canadian fear of being absorbed by the U.S. makes it all too easy for nationalists to claim that closer links with its southern neighbor are Canada's unique and ugly fate. Apparently they fail to recognize that national barriers are beginning to crumble all over the world. Canadians are afraid of the future that their society foreshadows but they are convinced at the same time that their economy is rich enough to support high living standards, whatever choices they make.

> Canada has this reversed. There is every reason to be confident that greater exposure to worldwide economic and cultural forces would continue to enrich Canadians and their distinctive, though definitely North American, way of life ... The small size of the Canadian market means that where there is direct competition with imports -- television drama, novels, and feature films, but not sports or news programs -- Canadian entertainment is more expensive to make and distribute than competing American products intended for a much larger market and therefore with lower average costs. So the local product often has to be subsidized. Publishers, writers, film producers, public-sector broadcasters, and some academics and journalists (incorrectly) associate these subsidies with the survival of their country's culture.

Indeed, although the industry lobby is promoting the notion that the economic welfare of the sector is associated with the protection of Canadian culture, the vast majority do not regard cultural industries as the guardians of national cultural identity, as disclosed in the following report of David Crane:

> ... according to the Decima survey, "Only 7 per cent ... believe that cultural industries make the greatest contribution to Canada's identity."
> Half of Canadians feel that Canada's identity would not be threatened by including cultural industries in the trade talks.98

Robert Fulford puts the industry's (not the consuming public's) cries of "cultural risk" into perspective in the following excerpt from his article entitled, "Blaming The Yanks":

> Of all the fallacies that encumber the advocates of Canadian culture, the most misleading is the belief that yet one more change in the structure of our cultural institutions will bring a bright new day to the arts in this country. The artists know in their bones that the only important problem is making art that will matter to themselves and to an audience, and that all other issues are marginal or meaningless ...
> Like its parent, Prentice-Hall in Canada was never described by anyone as a distinguished or important publisher. But in 1985 it became - if we believe Matt Cohen and many like him - the litmus of Canadian cultural policy, the test by which the Mulroney government and its nationalist minister of communications, Marcel Masse, would be judged.
> In 1984, Gulf and Western - the vast conglomerate that owns, among many other things, the book publishing firm of Simon & Schuster - purchased Prentice-Hall in the U.S. and its subsidiary in Canada ...
> The Prentice-Hall issue then attracted even more attention: its disposal would show, many thought, whether the Canadian government would sacrifice

> our cultural institutions in order to win an advantageous free-trade agreement with Washington. A long Toronto Star article, dealing with the Byzantine lobbying and counterlobbying, carried the alarmist heading, "Our culture is on the line." An innocent reader of a dozen or so such reports might have believed that, if Investment Canada did not deal severely with Gulf and Western, Canadian literature was doomed, ... the cultural effect will be minimal. A textbook company owned by Canadians, and managed by Canadians, is likely to make about the same publishing decisions as a textbook company owned by Americans and managed by Canadians.99

(xv) Cultural Faith In Private Sector: Although private industry's first, if not exclusive, priority is profit, there is a presupposition on the part of industry lobbyists that the mere difference of the nationality of industry owners will lead to the creation and distribution of culturally relevant product. There are no studies or empirical data to support such an assumption. Although various reports100 cite the fact that the majority of "Canadian" product is now distributed by Canadians - the factor of "nationality" is not established in any study as the independent variable affecting the creation of culturally relevant product. The independent variable is far more likely to be who has access to the most profitable product in the market place. Least efficient distributors, with the least capital, will distribute (most often) the least profitable product. In a market where there is far greater demand for foreign product, more efficient foreign distributors will produce and distribute that product. In a market that rewards poor domestic quality, smaller domestic distributors will handle domestic product that is less in demand. How many Canadian distributors would stop distributing relatively less profitable "Canadian" films if they were offered the distribution rights for foreign product that was in high commercial demand?101 Millard Roth argues that consumer demand and the profit motives are the variables that drive the industry in Canada as follows:

> There's an assumption that if Canadian nationals distribute foreign product a greater percentage of profit will find its way back into indigenous Canadian production. I don't think that there is anything in economic terms that possibly supports that argument. Investment is predicated on return. You go around the free world in our capitalistic society and that's what makes things happen ... If you look at all of the profits that are earned from distribution in Canada and take any realistic percentage of dividends, there is not a significant flow of profit on any regular basis.
>
> The profitability of distribution companies goes up and down significantly. It varies with the popularity and success of the features which are being distributed at any given time. There has not to my knowledge been Canadian feature films with any commercial potential that have not been distributed in Canada or the U.S.102

The private sector makes decisions on the basis of profit. The distribution of Canadian product by Canadians should not be misinterpreted as a form of national or altruistic commitment to culture. Rather, they distribute product to which they have access that is the most profitable. The substitution of American ownership of major U.S. studio distribution operations in Canada with Canadian owners would not change the distribution decisions of such corporations and would not contribute the improved dissemination of culturally relevant product. The national identity of successful distribution corporations is irrelevant to decisions concerning which product will be the most profitable. As well, the ability to create product that is relevant, and a contribution, to Canadian culture is not restricted by, or dependent upon, the nationality of the creator.

Conclusion

On the basis of the foregoing critique, it is submitted that many ostensible cultural programs may be inefficient, irrelevant, and even harmful to the realization of Canada's cultural policies. Contrary to the narrow and economically self-serving proposals of industrial lobbyists that usurp and abuse the legitimate interests of Canadian culture, Canada's free-trade negotiations present a unique opportunity for those with a sincere interest in Canadian cultural sovereignty and trade liberalization to rationalize and eliminate inefficient and haphazard cultural policy implements that fail to perform the cultural objectives that justify them. The opportunity of free-trade can be used to replace disfunctional programs with more rationally direct programs that are relevant to, and promote, the creation of product that enhance and contribute to Canada's unique heritage and national identity.

The "wolf guarding the sheep" logic of industry lobbyists ironically relies on the rhetoric of "cultural nationalism" to bolster trade protections that have dubious, if any, cultural significance.

In the absence of thorough and conclusive research103 that establishes a connection between economic support programs and trade barriers, and the creation and distribution of product that enhances and contributes to Canada's sense of cultural identity, Canadian free-trade negotiators will be hard pressed to distinguish between legitimate domestic policies of cultural relevance and economic trade protectionism. The legitimacy of trade barrier exemptions that allow domestic policies that, in turn, protect Canada's cultural interests can only be judge and justified on the basis of their <u>cultural</u> impact and relevance. For example, it is submitted that discriminatory Canadian subsidies, that provide public funds for the creation of U.S. television programs of little or no cultural relevance to Canada (and with no obligations for reinvestment into, or support of, culturally relevant product) may be indefensible as a <u>cultural</u> support programs within the context of a free-trade agreement.

If the objective of federal government policy is to provide economic support tied to industrial "input" criteria in order to contribute to an economic infrastructure, then present programs must be criticized for their lack of efficiency in achieving those objectives. Scholars of this topic unanimously agree that present cultural support programs that use industrial criteria for cultural objectives are inefficient and ineffectual at facilitating the creation of culturally relevant product. As well, if the fundamental interest of Canada's burgeoning entertainment industry is economic, then its lobbyists and advisors have done that industry a grave disservice by misleading its members into believing that "cultural nationalism" is an appropriate banner under which the economic interests of the industry can be justified under a free-trade agreement with the United States. The economic interests of that industry are far better served by well established legal international principles and criteria of exemption from trade liberalization initiatives, such as the "infant industry principle", than by the tenet of "cultural sovereignty". The misapplication of "cultural sovereignty" to safeguard trade protections that are irrelevant to Canada's cultural interests brings discredit to the industry's sincere "culture" advocates, and mistrust and misunderstanding to any free-trade negotiations. The irresponsible misapplication of Canada's cultural interests by industry lobbyists whose interests are primarily, if not exclusively, economic inhibits a true understanding between trading partners of the legitimacy of each other's domestic policy objectives. Debunking the industry's ideological exploitation of "cultural protectionism" is a step toward establishing principles and criteria upon which to distinguish between illegitimate economic trade restriction and legitimate cultural protectionism.

CHAPTER VI

CONCLUSION

International trade law consistently supports the proposition that nations commited to free-trade obligations retain their sovereign right to formulate and implement policies that protect their cultural and national identity. In addition, trading partners must ensure that such a sovereign right is not abused to secure an illegitimate industrial advantage that contravenes a nation's free-trade obligations. Because a nation's cultural policies and implementation strategies may be infinite in their nature and design, it is impossible to articulate definitive and detailed criteria that will address all possible fact situations to distinguish between legitimate cultural protection and illegitimate industrial protection. However, the general principles of guidance previously discussed in this research paper do provide a framework within which an arbitration tribunal may analyse the unique facts of a particular case to ensure that the integrity of a nation's cultural sovereignty is maintained.

Previous chapters of this research paper reveal that the protection of a nation's cultural sovereignty in the context of a free-trade agreement is viable and permissible when cultural policy instruments: directly promote the creation of culturally relevant product; rely upon culturally relevant (not industrial) criteria that reflect stated cultural objectives; are economically efficient; are the least restrictive means achieving intended cultural objectives; are proportionate in their detrimental effects, if any, on trade; are non-discriminatory in application; and are sincerely intended to achieve stated cultural objectives and are not a disguise for industrial protection.

International trade law clearly provides that trade protections that economically benefit industry in order to inefficiently and ineffectively provide an indirect, "trickle-down", benefit to Canadian culture cannot be tolerated in the context of trade liberalization initiatives. This is especially so where direct and efficient cultural implements exist without recourse to economic trade protection for cultural reasons. The previous chapters of this research paper make it clear that cultural justifications for inefficient and indirect industrial programs are not valid justifications where public expenditures targeted directly at cultural objectives will produce far more effective cultural results with greater efficiency and without any adverse effects on trade liberalization.

This is not to say that Canadian cultural industries cannot be successful participants toward the realization of Canada's cultural policy objectives through the implementation of publicly funded cultural support programs. However, such public funding must be culturally rational within the context of wider trade liberalization objectives and directly promote the creation of culturally relevant product.

The international trend of trade in cultural goods and services is toward trade liberalization, not toward trade protectionism.

The legitimate purpose of protecting the integrity of a nation's culture is respected by international trade law, even though all implements of cultural protection are subject to critical assessment to the extent they conflict with free-trade obligations. As described in Chapter VIII of this research paper, only cultural protection that are designed and implemented with the intention and ability to realize cultural objectives without allowing illegitimate economic protection for domestic industries are permissible. For example, cultural protections must be non-discriminatory because the ability to create and distribute culturally relevant product with public financial support does not depend upon the nationality of either the creator or distributor. No nation has a monopoly on the ability to contribute to its culture. Indeed, the application of cultural support programs that directly enhance Canadian culture in accordance with the aforenoted principles of international law can achieve Canada's cultural policy objectives without offending its international trading commitments.

The proposed Canada-U.S. free-trade agreement provides a unique opportunity for Canada to make its inefficient cultural policy instruments culturally effective while undertaking commitments for wider trade liberalization.

It is proposed that the aforenoted guiding principles of exemption justification for domestic cultural policy implements may be incorporated into the following draft Preamble to the Canada-U.S. free-trade agreement:

Whereas the parties desire to promote their historic friendship and forge closer economic ties through the expansion of trade; and

Whereas the principles of international law governing relations between nations recognize the sovereign equality and independence of all States to conduct their domestic affairs; and

In Recognition of their distinctive historical, social, political and cultural heritage and their desire to preserve and protect their unique cultural identity; and

In Recognition that the expansion of trade shall not interfere with the sovereign rights of the parties to maintain and undertake initiatives that promote and enhance their individual cultural integrity and the national identity of their peoples; and

In Consideration that all such initiatives must be effective and efficient instruments of cultural policy that are not disguised economic trade protections, and do not discriminate on the basis of nationality, arbitrary or irrelevant criteria, and to an extent beyond what is minimally required to achieve such cultural objectives in respect of either their design or implementation;

CHAPTER I

1. Rolling Stone, June 25, 1981 at pp. 20-21.

2. Secretary of State For External Affairs, Canadian Trade Negotiations: Introduction, Selected Documents. Minister of Supply and Services Canada, 1986, p. 1.

3. Ibid.

4. Ibid.

5. Alan Gotlieb, Canadian Ambassador to the United States in an unpublished speech to Stanford University, July 28, 1986.

6. Ibid.

7. The United States is still the largest trading nation in the world. In 1984 it accounted for 17% of all world merchandise imports and 11% of all world merchandise exports. Its role in international trade is thus critical for other trading nations of the world. Unfortunately, its position in international trade is deteriorating badly. As its share of world imports has grown, its share of world exports has declined from 18% in 1960 to 11% in 1984. Since 1980 alone, U.S. exports as a share of American GNP have declined by more than 30%. See note 5.

8. Order in Council, Nov. 5, 1982, P.C. 1982-3438.

9. Ibid., at p. 2, para. (a).

10. Whalley, J. and Hill, R., Canada-United States Free Trade, Vol. 11 Royal Commission on the Economic Union and Development Prospects For Canada, University of Toronto Press, Toronto, 1985.

11. Royal Commission - Report, Vol. 3, at p. 419.

12. Ibid., note 2, at pp. 13-15.

13. Quebec Declaration, op. cit., p. 1, cited ibid., note 2 at p. 13.

14. See Hill and Whalley, "Reservations about a Canada-U.S. Free Trade Arrangement" at p. 50, cite note 8; Mel Watkins, "Reservations Concerning a Free Trade Area Between Canada and the United States", pp. 85-90, cite note 10; B.W. Wilkinson, "Some Comments on Canada-U.S. Free Trade", pp. 91-94, cite note 10.

15. Royal Commission - Report, Vol. 3, at p. 420.

CHAPTER II

1. John M. Jackson, World Trade And The Law of GATT, The Bobbs-Merrill Company Inc., 1969 at p. 249 recounts that the "embryonic version" of an MFN clause has been traced to 1417.

2. Ibid., at p. 575.

3. Economic Council of Canada, Looking Outward: A New Trade Strategy for Canada. Ottawa: Minister of Supply and Services Canada, 1975, Chap. 8 and 9.

4. Canada, Parliament, Senate, Standing Committee on Foreign Affairs, Canada-United States Relations, Vol. III, "Canada's Trade Relations with the United States" (1984).

5. Royal Commission Report (1985), Vol. 1, p. 380.

6. Ibid., p. 382.

CHAPTER III

1. See Report of the Royal Commission on National Development in the Arts, Letters and Sciences (Ottawa, King's Printer, 1951); Report of the Royal Commission on Broadcasting (Ottawa, Queen's Printer, 1957); Report of the Royal Commission on PUblications (Ottawa, Queen's printer, 1961); Report of the Special Senate Committee on Mass Media, 3 (Ottawa, 1970); Report of the Royal Commission on Newspapers (Ottawa, Supply and Services, 1981); Report of the Federal Cultural Policy Review Committee (Ottawa, Supply and Services, 1982); Funding of the Arts in Canada to the Year 2000, The Report of the Task Force on Funding of the Arts (Ottawa, Supply & Services, 1986).

2. Text of Report By The Minister For International Trade To The Prime Minister, Sept. 17, 1985, pub. in note 2. See pp. 65-63.

3. Hansard, H. of C. Debates, September 26, 1985.

4. Right Honorable Brian Mulroney, Prime Minister, "Notes For An Address To The University of Chicago", Dec. 4, 1985, Cultural and Public Information Bureau, Dept. of External Affairs, Ottawa, Canada, No. 85/28.

5. Ibid.

6. Statement by the Right Honorable J. Clark, Secretary of State for External Affairs, No. 85/69, New York, November 18, 1985.

7. Per The Rt. Honorable J. Clark, see note 2, pp. 83-85.

8. Unpublished correspondence from the Minister to Hon J. Hall, esq., dated June 27, 1986.

9. Per The Rt. Honorable J. Clark, see note 2, p. 85.

10. Address delivered by Hon. J. Kelleher to University of Western Ontario, Jan. 22, 1986, pub. Ministry For International Trade.

11. Ibid., at p. 9.

12. Cited in Globe & Mail, December 16, 1985 at p. A.7. The debate was in response to Senator Grafstein's motion that, "the crisis in Canada's cultural industries accelerated by the Government's failure to define assurances and set guidelines safeguarding the cultural industries in trade talks with the United States, or to exclude cultural industries from the trade talks with the United States...".

13. Per The Rt. Hon. J. Clark, see note 2, pp. 85-86.

14. Per Hon. J. Kelleher, see Chapter II note 6, pp. 6-7.

15. Unpublished correspondence from the Prime Minister to Hon. J. Hall, esq., dated June 9, 1986.

16. Op. cit., March, 1986, Vol. p. 27.

17. _Op. cit_. at p. A1.

18. _Op. cit_., per Martin Cohn, "Don't Sell Off Our Culture", _Toronto Star_, Nov. 6, 1985 at p. A1. See also, _Cinema Canada_, Vol. 133, September 1986, at pp. 9-10.

19. Vol. 98, No. 45, pp. 14-16, November 11, 1985 -- art. by Mary Janigan.

20. November 6, 1985 at p. A.1.

21. Chapter IV of _Canadian Trade Policy For The 1980's_, External Affairs Discussion Paper, Pub. Minister of Supply, Ottawa, 1983, at p. 26 advances the point that Canadian cultural policies can be supported, enhanced, and augmented by trade policies - placing much of the burden of economic viability on their ability to trade into foreign markets: "Cultural trade policies can then be developed as corollaries of any domestic initiatives to help increase the Canadian share of both the domestic and foreign cultural markets ... Cultural industries ... future success depends heavily on their ability to penetrate and develop the markets of our traditional partners." This discussion paper reflects a shift away from public economic support toward a recognition that commercial concerns must secure their viability through international trade and competition.

CHAPTER IV

1. David Crane, "Free Trade and Canadian Culture", Toronto Star, August 2nd, 1986, p. A2.

2. Ed Greenspon, "Free Trade Will Reduce Canadian Magazines", The Globe and Mail, April 24th, 1986, op. cit., p. B8. Mr. Osborne's plea is also reported in Kenneth Kidd's article, "Save Culture From Free Trade, Publisher Urges", Toronto Star, April 24th, 1986, p. E3.

3. Globe & Mail, April 4, 1987, at p. D.8.

4. Carol Goar, "Masse Tries To Educate Cabinet On Culture", Toronto Star, February 13, 1986, p. A19.

5. Francois Macerola, "Free Trade Exemptions", Cinema Canada, December, 1985, p. 39. As previously noted, the 'MacDonald Report' does not advocate Macerola's assertion at all -- in fact, it endorses the notion that a distinction exists between trade and cultural policies.

6. Sid Adilman, "Cultural Sovereignty A Deadly Drama", Toronto Star, November 6, 1985, p. B1.

7. Ibid., p. B1. This is an excellent example of the confusion caused in the cultural industries over the failure to recognize the distinction between industry interests and Canada's cultural interests.

8. Richard Lipsey (infra) states that, "special interest groups prefer direct restrictions on the ability of U.S. producers to compete. This is because restrictions have concealed costs that are not easy to calculate, therefore, are less likely to arouse public objection."

9. Michael Bergman, "The Impact of Free Trade On Canadian Cultural Industries", Cinema Canada, November 1985, pp. 8-9.

10. Davidson Dunton, "The Role Of The Media" in David C. Smith's ed., Economic Policy Advising In Canada, C.D. Howe Institute, Montreal, 1981, pp. 139-146.

11. Op. cit., Cinema Canada, Nov. 1985, pp. 8-9.

12. Toronto Star, April 15, 1986, p. A17; citing ACTRA's submission, presented by Mr. Lazer, to the Ontario Provincial Government Committee on Culture.

13. T. Thompson, "Just How Much Will Free Trade Cost", Media Magazine, December, 1985, at p. 7.

14. David Crane, "Free Trade and Canadian Culture", Toronto Star, August 4th, 1986, p. A8.

15. Globe & Mail, November 14, 1986, p. B6. Johnson's assertion that the United States guards against foreign investment in cultural industries is a gross and misleading exaggeration. Only foreign ownership in U.S. broadcasting facilities are regulated.

16. I.e., the cultural industry provisions under Investment Canada Act, R.S.C. 1985.

17. Ibid., p. B1.

18. Roth Report, op. cit., at p. 9.

19. "Notes For Remarks At Annual Meeting of ACTRA" unpub. paper, delivered Toronto, June 24, 1986.

20. "Canadians Do Want More Homegrown Culture" Toronto Star, Nov. 20, 1985, p. A25.

21. Toronto Star, Nov. 23, 1985, p. B1.

22. "The Publishing Factor", Globe & Mail, Nov. 5, 1985 - editorial.

23. Cited in David Crane, "Free Trade And Canadian Culture", Toronto Star, Aug. 4, 1986, p. A2.

24. Ibid., at p. A8, Aug. 2nd, 1986.

25. Ibid., at p. A1, Aug. 3, 1986.

26. Ibid., at p. A6, Aug. 3, 1986.

27. "Its Time We Stopped Sticking Our Heads In The Cultural Sand", Globe & Mail, Dec. 7/85.

28. See note 23 of Chapter IV at p. A4, Aug. 1, 1986.

29. See note 17 of Chapter IV, p. 8.

30. Tuesday, Aug. 5, 1985, editorial p. A14.

31. Marie-Jose Raymond and Stephen Roth, Report On The Film Industry Task Force, Minister of Supply, Ottawa, 1985.

32. See note 42 of Chapter IV, Op. cit., at p. (xix).

33. See note 6 of Chapter III, and also see, Paul Andley, Canada's Cultural Industries, CIEP; Lorimar, Toronto, 1983.

34. Ministry of Communications, The National Film and Video Policy, Minister of Communications - Supply, Ottawa, 1984 (the "Fox Report"), at p. 8.

35. Ibid., at p. 8.

36. Festival of Festivals Film Conference - "International Film Trade and Canadian Culture" - debate, Royal Ontario Museum, September 14, 1986. (unpublished notes of debate)

37. See note 32 of Chapter IV, op. cit., p. (xxi).

38. Marie-Jose Raymond, and Stephen Roth, Report On The Film Industry Task Force, Ministry of Supply and Services, Ottawa, November, 1985 (the "Roth Report").

39. Ibid., at p. 9. It is interesting to note the Roth Report's admission that trade protections should be industrial.

40. Stratavision Inc., The Structure And Performance Of The Canadian Film And Video Distribution Sector, (unpub.) Independent Study, Federal Dept. of Communications, October 4, 1985. (the "Stratavision Report").

41. Ibid., op. cit., at p. 33.

42. L. Applebaum and J. Hebert, Report of the Federal Cultural Policy Review Committee, Minister of Supply, Ottawa, 1982 (the "Applebaum Report") - see pp. 251-252.

43. Ibid., op. cit., p. 250.

44. "Canada's Trade Options", C.D. Howe Institute, Observation #27, 1986.

45. See note 23 of Chapter IV, August 4, 1985.

46. Ibid.

47. See note 42 of Chapter IV, pp. 28-29.

48. Ibid.

49. Toronto Star, Nov. 29, 1985.

50. See note 23 of Chapter IV, Aug. 5, 1985.

51. Ibid. This concerns the above cited 278 page Cabinet Memo of Mr. Masse in January of 1986 that was not adopted by Cabinet.

52. See note 38 of Chapter IV, op. cit., at p. 8.

53. Ibid., see comment at note 211.

54. See note 23 of Chapter IV, and see Toronto Star, January 20, 1987 at p. A7.

55. Ibid.

56. Op. cit., at p. 8.

57. Paul Audley, Canada's Cultural Industries, CIEP-Lorimer, Toronto, 1983, at p. 217.

58. David Crane (see note 23 of Chapter IV - Aug. 3/86) cites the statistics that 85% of books by Canadian author, 87% of "Canadian content" records, and 95% of "Canadian content" films are distributed in Canada by Canadian companies, and not by the foreign companies that record the high sales volumes and revenues. The announcement on February 13, 1987 of a film distribution-import licensing program by the Minister of Communications is directed at

forcing international film companies to distribute films in Canada via Canadian companies - as per the Cohen Report, 1983 (unpublished).

59. Toronto Star, at p. A17. Pierre Juneau, President of the CBC, also put trade barriers in the context of a national ability to contribute to Canadian culture in his February 27, 1985 address to the University of Toronto, Faculty of Law, as follows: "My concern is not that we are watching American stories on our own screens. It is that we are not watching all those Canadian stories that are worth telling and watching, stories that must be told, stories that beg to be told."

60. See note 23 of Chapter IV, Aug. 5th, 1986.

61. Op. cit., at p. 249.

62. See note 23 of Chapter IV, p. A2, August 2nd, 1986.

63. Toronto Star, June 26, 1986, p. A1.

64. Professor B. Lewis, Canadian Independent Film Distribution And Exhibition (unpub.) Independent Study - University Research Program of Department of Communications, Ottawa, 1985.

65. See note 51 of Chapter IV, re: Masse Cabinet Memorandum.

66. See note 23 of Chapter IV, Aug. 4/86.

67. See S. Globerman, "Canadian Culture Under Free Trade", Canadian Business Review, Summer, 1986, at p. 19.

68. A p. B1.

69. See note 14 of Chapter IV, at p. A8.

70. See note 36 of Chapter IV; this is an ironic use of an American expression.

71. See note 23 of Chapter IV; Aug. 5/86.

CHAPTER V

1. "Report of the Film Industry Task Force", Min. of Supply and Services, Ottawa, November 1985 - recommendation #1 at page 1. Stephen Roth, Co-Chairman of the Task Force, is an extremely prominent member of Canada's film production and distribution industry. As well, two members of the International Trade Advisory Committee formed to advise the Canadian government on "cultural" trade matters are Philippe de Gaspe Beaubien of Telemedia, and Ronald Osborne of Maclean-Hunter - represent the cultural industries, and an entire subsidiary Sectoral Advisory Group on International Trade, chaired by Marie-Josee Raymond, a leading member of Canada's film production and distribution industry - and the second Co-Chairperson of the aforenoted task force.

2. Op. cit., Saturday Night, March, 1986, pp. 7-9.

3. Ibid.

4. S.D. Lyon and M.J. Trebilcock, Public Strategy and Motion Pictures, Ontario Economic Council, Toronto, 1982, citing studies of Migue (1971, 1979), at p. 3. Also see, M.J. Trebilcock and D.G. Hartle, "The Choice Of Governing Instrument" E.C. of C. Reference Paper WSIII-1, Aug. 1982.

5. Toronto Star, Monday, Dec. 9, 1985 at p. B10.

6. Financial Post, June 21, 1986 - reproduced in World Press Review, August, 1986, pp. 37-38.

7. "Canadian Identity" in Elliot J. Feldman and Neil Neville ed., The Future of North America: Canada, The United States, and Quebec Nationalism. The Institute For Research On Public Policy, Montreal, 1979, at p. 50.

8. "Economic Approach To Nationalism" in J. Chant's ed., Canadian Perspectives In Economics, Collier-Macmillan Can. Ltd., Toronto 1972 at L1-12.

9. Ibid., see A. Breton, "The Economics of Nationalism", Journal of Political Economy, Aug. 1964.

10. See note 87 of Chapter V. Hence, the "Realpolitik" of public policy formulation.

11. Ibid., at p. 33 - the effects of present cultural trade protection on income and wealth centralization are discussed below herein.

12. Ibid., at p. 99 at note 23 of Chapter V. Also at p. (xxii) Globerman comments that, "Unfortunately, in the case of cultural activities, those responsible for being opinion leaders are often in the position of promoting their own self-interest by championing Canadian cultural nationslism...."

13. See note 94 of Chapter V, at p. 9.

14. "The Impact of Cultural Industries On Cultural Identity" delivered at University of Western Ontario.

15. Migue, Jean-Luc, Nationalistic Policies In Canada, C.D. Howe Institute, Montreal, 1979, at p. 71.

16. The major cultural reports containing cultural policy proposals this decade are:

    1. L. Applebaum and J. Hebert, Report of the Federal Cultural Policy Review Committee, Minister of Supply, Ottawa, 1982. ("Applebaum")

    2. Paul Audley, Canada's Cultural Industries, CIEP; Lorimar, Toronto, 1983.

    3. R.I. Cohen, Film Distribution, Exhibition and Marketing-Task Force Report, Department of Communications, Ottawa, January 23, 1983 (unpublished) (the "Cohen Report").

    4. Ministry of Communications, The National Film and Video Policy, Minister of Supply, Ottawa, 1984. ("Fox")

    5. Prof. B. Lewis, Canadian Independent Film Distribution and Exhibition (unpub.). Independent Study, University Research Program Department of Communications, Ottawa; 1985. ("Lewis")

    6. Stratavision Inc., The Structure And Performance Of The Canadian Film And Video Distribution Sector (unpub.). Independent Study, Department of Communications; October 4, 1985 ("Stratavision")

    7. Marie-Jose Raymond and Stephen Roth, Report On The Film Industry Task Force, Minister of Supply, Ottawa; November 1985. ("Roth")

    8. Nordicity Group Ltd., Film/Video Retail Study (unpub.). Department of Communications, Ottawa, July '85. ("Nordicity")

17. See note 89 of Chapter V, op. cit., at p. 101.

18. Op. cit., Toronto Star, Aug. 2, 1985 at p. A8.

19. Paul Audley, Canada's Cultural Industries, CIEP/Lorimar, Toronto, 1983, at p. 224.

20. Ibid., at pp. 241-242.

21. Public Strategy And Motion Pictures, Ont. Economic Council, 1982, at p. 114.

22. "Market Structure and TV Programming Performance in Canada and the U.K.: A Comparative Study", Canadian Public Policy, vol. 8 (1982). See also, Thelma McCormack, "Culture and the State", Canadian Public Policy, Vol. 10 (1984).

23. Ibid., at p. 355.

24. "Canadian and British T.V. Markets: Why The CBC Should Not Be Like the BBC", Canadian Public Policy, Vol. 10 (1984).

25. Globe & Mail, March 26, 1987.

26. The survey, a joint venture by a research firm and an advertising agency, is the most comprehensive since 1969 when the Senate Special Committee on the Mass Media, headed by Senator Keith Davey, asked Canadians their opinion of the media. While the Davey committee interviewed 2,254 Canadians at home for two to six hours each, the latest survey is the result of hour-long interviews at home with 4,006 Canadians. A survey of this size is estimated to have a margin of error of plus or minus 1.6 points, 19 times out of 20. Twenty private companies, including Molson Cos. Ltd., and the governments of Ontario and Quebec, underwrote the survey's $400,000 cost. For that reason the survey is considered proprietary and, unlike the federally financed Davey committee, many details were not made public.

27. See note 25 of Chapter V.

28. See note 1 of Chapter II.

29. Ibid., at p. 42.

30. "Nationalistic Policies in Canada: An Economic Approach", C.D. Howe Institute, Montreal (1979).

31. See note 4 of Chapter V.

32. Ibid., at p. 117.

33. "Film Assistance: Future Options", unpublished discussion paper (circulated to Canadian Department of Communications For Comment), Phillip Adams, Chairman, 1986. (Response to Australian White Paper on Tax Reform, 1985.)

34. See note 44 of Chapter IV.

35. See note 42 of Chapter IV.

36. Ibid., at pp. 41-42.

37. Cited in Sid Adilman's art. "Hollywood's Too Much In Control", Toronto Star, Nov. 27, 1985, at p. B1.

38. See note 16 of Chapter V.

39. Ibid., at p. 250.

40. See note 16 of Chapter V, cited in Chapter F: Conclusions at p. 51. As well, at Toronto's "Festival of Festivals Film Conference", September, 1986, Stephen Roth admitted that such programs as the capital cost allowance tax program can "backfire" and that the production of poor quality films that are unpopular hurt the industry and the quality of Canadian cultural expression.

41. See note 16 of Chapter V. It is important to note Globerman's critique of input criteria rather than output criteria for assessing the cultural outcome of film production. This approach is consistent with the Lyon-Trebilcock analysis and conclusions discussed above.

42. This is because most films used Canadian public funds to produce product with commercial appeal primarily for the U.S. market and not product of unique commercial appeal to Canadians.

43. Ibid., at pp. 75-76. (CR in C.)

44. See note 89 of Chapter V, op. cit., at pp. 101-102.

45. Ibid., at p. 102.

46. See note 4 of Chapter V, citing Migue study, at p. 37.

47. See note 8 of Chapter V.

48. See note 87 of Chapter V, at pp. 28-29. These research conclusions are also supported by Lyon and Trebilcock, see note 36 of Chapter 4.

49. Ibid., at p. xix.

50. Ibid., at p. 91 - Conclusion chapter.

51. Globe & Mail, April 4th, 1987, p. D8.

52. See note 16 of Chapter V.

53. Ibid., at pp. 6-7.

54. Ibid., at p. 9.

55. Ibid.

56. See note 94 of Chapter V, at p. 94.

57. The Globe & Mail editorial of March 26, 1987 comments that in March of 1987 "the CRTC made its authority felt (as it) ordered, as a condition of renewing CTV's licence for five years, that the network do what it should have been doing for the past decade. CTV, which broadcast only 1.5 hours of Canadian drama per week in the evening hours in 1985-86, has been ordered to improve that performance gradually until, in 1991-92, it is offering 4.5 hours. It is a measure of CTV's dismal record in the dramatic field that this is considered significant progress - that within five years there may be somewhat less than one hour a night of Canadian drama on the premier private Canadian network." (emphasis added)

58. See note 89 of Chapter V, at p. 6.

59. See note 16 of Chapter V, at p. 100 of that Report. See, United Kingdom, Secretary of State for Trade, Films: A Report On The Supply of Films For Exhibition in Cinemas, H.M.S.O., London, 1983. On Dec. 11, 1980 the U.K. government launched an investigation into restraint of trade in the film industry further to the 1966 Report on this subject which found abusive trade practices by members of a highly concentrated industry. The inquiry asserted the need to maintain competition among domestic film traders. See also, Canada, Department of Labour, Investigation Into An Alleged Combine In

<u>The Motion Picture Industry In Canada: Report of Commissioner</u>, F.A. Acland, King's Printer, Ottawa, April 30, 1931.

60. See note 16 of Chapter V, under Chapter entitled "Mandate" of that Report.

61. See note 87 of Chapter V, under Chapter entitled "Corporate Strategies".

62. <u>Ibid</u>., at pp. 40 and 70.

63. <u>Ibid</u>.; On January 1st, 1987 the CRTC eliminated NBC from all Metropolitan Toronto cable subscribers and replaced it with a second french language station. Those who could not afford to rent or purchase a 'converter' and who wished to continue subscribing to cable television, could no longer view the NBC network.

64. R.S.C., 1970; Chap. B-11, subpara. 3(g)(iv).

65. See note 16 of Chapter V.

66. <u>Ibid</u>., at p. 259.

67. David McQueen, "Alternative Scenarios In Broadcasting" Canadian Public Policy, Vol. 9, March, 1983, pp. 129-134.

68. See note 16 of Chapter V, Audley <u>op. cit</u>., at pp. 245-246.

69. See note 16 of Chapter V.

70. <u>Ibid</u>.

71. Cited in the <u>Globe & Mail</u>, Editorial, p. A7, Feb. 27, 1986.

72. "Free Trade And Cultural Industries", unpublished paper, Faculty of Law, University of Toronto, Spring, 1986.

73. (1974), 9 Journal of International Law and Economics 149.

74. <u>Ibid</u>., at p. 155.

75. Kahn, at p. 13. See, CRTC, <u>Canadian Broadcasting and Telecommunications: Past Experience, Future Options</u>, Ottawa, Queen's Printer, 1980. As well, Robert Babe, in <u>Canadian Television Broadcasting</u> Economic Council of Canada, Ottawa, 1979, at pp. 75-84 points out that ostensible proponents of Canadian cultural interests go to great lengths to squirm out of their CRTC content requirements and put "cheap" Canadian product (e.g. game shows) on the air rather than make a cultural contribution - while, at the same time preaching the gospel of Canadian culture to keep out commercial competition.

76. See note 4 of Chapter V.

77. M.J. Trebilcock, D. Hartle, J.R.S. Prichard, D.D. Dewees, "The Choice of Governing Instrument", Regulation Reference Technical report No. 12, Economic Council of Canada, Ottawa, 1981.

78. See note 87 of Chapter V, at p. (xxi).

79. _Ibid._, at p. (xx).

80. _Ibid._, at p. (xxii).

81. Globe & Mail, April 4th, 1987, p. D1.

82. Journal of World Trade Law, Vol. 20, 1986, p. 363. Rugman also notes that, "Much Canadian analysis (especially by economists) about U.S.-Canadian trade relations ignores the institutional dimension at the heart of the issue of contingent protection. Yet it is apparent that the U.S. International Trade Commission (ITC) is now being used as an instrument to block imports, especially of Canadian resource-based products. U.S. trade laws permit U.S. producers to file for countervailing duties if the imports of competitors are alleged to be subsidized by foreign governments. The premise is that U.S. producers should not have to compete against foreign treasuries. Similarly anti-dumping duties can be sought, as can more general escape clause actions. In its operations the ITC is thereby representing the interests of producers and is ignoring the interests of U.S. consumers. In this manner the ITC is now contributing to serious inefficiencies in the world trading system and it is imposing welfare costs on both the United States and other nations, especially Canada. While many of the U.S. trade policy actions are contested by relatively large Canadian corporations it is obvious that smaller Canadian producers would find it financially prohibitive to field a well briefed legal team to represent themselves before the ITC and Commerce Department. Furthermore, there are limited opportunities in Canada for government departments or producers' associations to assist small individual producers threatened by U.S. legal actions. Thus the dice are loaded in favour of the U.S. plaintiff. Indeed, for the price of a lawyer, virtually any U.S. producer can file a petition with the ITC and have a 50 per cent chance of winning a tariff against a foreign competitor."

83. See note 2 of Chapter I.

84. Globerman and Vining, "Canadian Culture Under Free Trade", Canadian Business Review, Summer, 1986, at p. 18.

85. _Ibid._, at p. 22.

86. _Ibid._, at p. 24.

87. Steven Globerman, _Cultural Regulation In Canada_, The Institute For Research On Public Policy, Montreal, 1983, at p. (xviii).

88. [1981] 2 F.C. 248 (F.C.A.); [1982] 1 S.C.R. 540 (S.C.C.).

89. [1982] 1 S.C.R. 540, at p. 542.

90. _Ibid._, at p. 542.

91. [1981] 2 F.C. 248, at p. 261.

92. Note 89 of Chapter V, at p. 540.

93. See James Laxer, Lead of Faith, Hurtig Publishers, Edmonton 1986.

94. Lipsey and Smith, Taking The Initiative: Canada's Trade Options In A Turbulent World, C.D. Howe Institute, 1985, Chap. 6, pp. 89-102.

95. Ibid., op. cit., at p. 97.

96. Ibid., op. cit. at p. 95.

97. World Press Review, May, 1986, at p. 25, reprinted with the permission of The Economist, of London.

98. "Free Trade Fears", Toronto Star, March 4, 1986, p. A1.

99. Saturday Night, March, 1986, pp. 7-9.

100. See note 16 of Chapter V.

101. In fact, the recent film importation licensing scheme is designed to create greater opportunities to distribute foreign films in Canada by Canadians. Since those domestic operations would not otherwise be able to bid for the distribution of such product, it will be very interesting to see how many Canadian films now being distributed by those Canadian distributors are "dropped" by them in favour of greater profit opportunities.

102. Cited in Sid Adilman, "Hollywood's Too Much In Control", Toronto Star, Nov. 27, 1985, at p. B1.

103. Dr. Richard Lipsey, Research Director, C.D. Howe Institute advises the author that such an analysis would require his Institute to commit 18 months of study to the project at a cost of approximately $750,000. (Feb. 23rd, 1987).

L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques
L'Institut de recherches politiques ◦ The Institute for Research on Public Policy ◦ L'Institut de recherches politiques