

2004

The Curb Center At Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media

Bill Ivey

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/jetlaw>



Part of the [Cultural Heritage Law Commons](#)

Recommended Citation

Bill Ivey, *The Curb Center At Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media*, 7 *Vanderbilt Journal of Entertainment and Technology Law* 90 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/jetlaw/vol7/iss1/4>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Journal of Entertainment & Technology Law* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.



DATE DOWNLOADED: Wed Apr 26 10:07:59 2023

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Bluebook 21st ed.

Bill Ivey, The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media, 7 VAND. J. ENT. L. & PRAC. 90 (2004).

ALWD 7th ed.

Bill Ivey, The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media, 7 Vand. J. Ent. L. & Prac. 90 (2004).

APA 7th ed.

Ivey, B. (2004). The curb center at vanderbilt: panel discussion on federal regulation and the cultural landscape, office of the ustr, and popular media. Vanderbilt Journal of Entertainment Law & Practice, 7(1), 90-110.

Chicago 17th ed.

Bill Ivey, "The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media," Vanderbilt Journal of Entertainment Law & Practice 7, no. 1 (Winter 2004): 90-110

McGill Guide 9th ed.

Bill Ivey, "The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media" (2004) 7:1 Vand J Ent L & Prac 90.

AGLC 4th ed.

Bill Ivey, 'The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media' (2004) 7(1) Vanderbilt Journal of Entertainment Law & Practice 90

MLA 9th ed.

Ivey, Bill. "The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media." Vanderbilt Journal of Entertainment Law & Practice, vol. 7, no. 1, Winter 2004, pp. 90-110. HeinOnline.

OSCOLA 4th ed.

Bill Ivey, 'The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media' (2004) 7 Vand J Ent L & Prac 90 Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Provided by:

Vanderbilt University Law School

The Curb Center At Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media

March 19, 2004*

Bill Ivey:

I want to introduce Joan Shigekawa, who is currently the head of the Creativity and Culture Program at the Rockefeller Foundation. Rockefeller has been the generous funder of this conference. I will say that Joan is a cultural policy specialist in her own right so she is somebody who not engages the funding of arts policy, but she is someone who can get into trenches and talk about the issues. So it's really great to have her here.

This is the Curb Center's first conference. I'm delighted that it's on this topic because it really goes to the heart of what this center is all about. That is, we are looking at a specific kind of content in the U.S. cultural policy world. We are looking at policies and practices of America's arts industries, at legislation, and regulation as the combined sources of U.S. cultural policy. We are also going at it with, I think, a very special and novel kind of process. We are determined to be dedicated to the process of connecting scholars and industry leaders and legislative and regulatory staff so that we are connecting the scholars and researchers with practitioners. I think we have done that today and I am delighted with the array of specialists from different perspectives and practitioners from different organizations, different institutions, and entities that we have with us.

For me, the idea for this approach emerged back during the three and a half years I was chairman of the National Endowment for the Arts. We spent a lot of brain power, lots of time out in the world of the nonprofit arts, and a considerable amount of money trying to understand the supply side needs of America's nonprofit arts organizations concentrating on the refined arts institutions—the art museum, the symphony orchestra and so on. And much of

what constituted policy research was really about creating arguments and strategies to increase the supply of the refined nonprofit arts. Meanwhile, while we were in Washington all caught up in trying to get an extra 5 or 10 or 15 million dollars for the NEA, the term of copyright was being extended, radio was consolidating, there were aggressive policy support mechanisms in play for the distribution of U.S. cultural products in the marketplace and so on. In other words, there were policy activities underway that were in fact reshaping the U.S. cultural landscape and, to an extent, the global cultural landscape. All the while, my colleagues who were concerned with cultural policy of the U.S. were most caught up in that extra 10 or 15 million dollars for the NEA. And so I said to myself, if I ever had the opportunity, I'd like to look at some of these bigger issues and work with an institution that has the capacity to investigate all the different aspects; a kind of new approach to cultural policy. Look at real issues, real policy makers, those entities that shape the cultural scene.

I'll digress for a second and say a word about culture. We can have an entire conference on culture and it will be unsatisfying just trying to define the term. But I would say briefly that, for the Curb Center, our working definition is something that is broader than culture with a capital "C." That is trying to sense a culture that is contained in the phrase "Company XYZ supports the cultural life and the community," which generally means that company is engaged in helping increase the supply of the nonprofit arts. But we also have a definition that's narrower than culture in the sense that anthropologists use that term—that is, the phrase "the agricultural practices of the XYZ tribe were a simple component of their culture." So we are interested in the expressive life of American society and what policies and practices shape that expressive life. So we are

Curb Center Panel Discussion

interested in drama, from the Sopranos to Shakespeare. We are interested in music, from blue grass bands to symphony orchestras, and most especially we are interested in the business practices, legislation, and regulation that either nurture or constrain on expressive work, nurture or constrain American art making, our creativity, and access to cultural character.

So here at Vanderbilt, we have the unique opportunity to work with a research oriented business school, [Owen Graduate School of Management], Vanderbilt Law School, Arts and Sciences, our Blair School of Music and Music Conservatory, and we have a wonderful proximity, both emotional and physical, to Nashville's entertainment industry. So there is a unique combination of assets here on this campus that help us carry out this task.

As you look at our program today, it's pretty obvious that we could have an entire conference on any one of these sessions because each of the topics is in itself a very large conversation. As you watch the Curb Center over the next few years, I think you will see a number of these issues that are only touched on their hour and a half sessions today expanded into larger programs. But I think you'll see here an indication of what we will be doing and also how we will be doing it.

With those introductory comments, it is my pleasure to introduce the moderator of our first panel: Bruce Berry, who has been with the faculty of the Owen School since 1991. He is the director of the school's Ph.D. program in management, which is a position he has had since 1998. He's very engaged in the community here as well as the Vanderbilt community. He's in the middle of a two-year term as president of the American Civil Liberties Union in Tennessee. And he is also a frequent contributor to the pages of the Nashville Scene, a newspaper here in Music City. His approach to his work as a professor dealing with issues in management as a scholar has been from the perspective of psychology and organizational behavior, group behavior. He uses multiple perspectives – social power and influence, negotiation, conflict management, small group interaction, and so on – in analyzing management and group interaction. He is also very interested in social issues in the workplace. So we basically have a scholar that's very involved in the community and is interested in the business environment from the point of view of individual and group psychology. So make welcome our first moderator.

Bruce Berry:

Thank you Bill. When Bill asked me to run his panel for this I think I took about ten seconds to say yes. I think the Curb Center is one of the niftiest intellectual enterprises that's gotten going on this campus in a long time and I hope it's a great and wonderful long-term success and I guess I'm honored to be the moderator of this first conference moderator of the first sitting panel, which is fabulous.

I'm one of these people who when I travel overseas I walk down the street of some wonderful international city and I see a Pizza Hut over there, and a McDonald's over there, and a Starbucks, and then pass by a movie theatre and they are running American Pie and other great works of the American cinema and it makes me a little jittery this idea of the exported American culture. And so I was really delighted to see that among these great topics on the conference agenda today is this first panel on the exportation of culture and on the role of the U.S. Trade Representative's Office in that, because I think that looking at the regulation of culture, it seems like a topic that might be easy to omit but one that's really critical. My role is mainly to sit over there in the corner and to make sure panelists adhere to the time limits and I'll introduce them. I'll introduce Beverly now and then Carol and Tim after Beverly discusses her paper, and we'll hear from Carol Balassa and Tim Reif and then we'll have interaction and I'll just track as necessary.

Beverly Moran was educated at Vassar and NYU. She's been at Vanderbilt since 2001. She's a professor of law and sociology here, and a leading tax scholar. Her bio mentions that she's written on the disparate racial impact of the U.S. tax code and I've read one of her articles on that. It was pretty terrific stuff. She is an award-winning teacher. A few years ago she sought and received funding from the Ford Foundation to put together an interdisciplinary faculty research circle on the topic of race and wealth disparity in the 21st Century America; she's drawn into this research circle faculty from the humanities and social sciences including myself and various departments, not just here at Vanderbilt but also at Fisk, Tennessee State University and Meharry Medical School. A really wonderful interdisciplinary effort and I mention this because I can say that Beverly Moran is a really passionate and wide-ranging intellect. And so here's Beverly Moran

CURB CENTER SPECIAL FEATURE

to talk about her paper, The United States Trade Policy and the Exportation of the U.S. Culture.

Beverly Moran:

Thank you. I wanted to start by thanking Bill Ivey for coming up with the innovative idea of setting American cultural policy and to thank Mike Curb and his family for funding this project. The Curb family has contributed so much to Nashville and they are an inspiration to those of us who like them come here from other places and have made Nashville our home. I want to thank the Rockefeller Foundation for supporting this conference. I want to give my particular thanks to Bruce Barry who agreed to moderate this panel at a late date. He is one of the most important and productive members of the Ford Foundation sponsor project on wealth and race that we've been working on together for the last two years. And finally I want to thank the panelists, Carol and Tim, who've taken time out of their week to travel to Nashville to be part of this process.

I'm particularly pleased to be part of this project because it deals with both the stated public policies about the arts and the unstated policies that come from other government functions such as general regulation, trade, zoning and the like. This emphasis on hidden or un-self conscious public policy is especially significant to me because I've spent my life before entering the academy running an economic development program for the city of New York and, as you might expect, one of our target areas was the arts because of their tremendous contribution to the New York City economy.

It was during my tenure in economic development that I first saw the phenomenon that Bill asked us to look at in this conference and throughout our association with the Curb Center for Public Policy and Arts. That is, how art policy is made both directly through such organizations as the National Endowment for the Arts and indirectly through other incentives and government policies.

In order to fit within this theme of our hidden cultural policy, I present a case study of the United States Trade Representative and the International Trade and Motion Pictures. So to begin, what is the United States Trade Representative? The United States Trade Representative is one of many government agencies that deal with our international trade policy. Although it is not the only federal agency that deals with international trade policy, the United States Trade Representative's history makes it somewhat unique because it is the only government agency whose sole purpose is to enhance our international trade. This special mission came about because, prior to its creation, most of our international trade policy was coordinated by the

“ I picked the motion picture industry because it is our biggest success in terms of our balance of trade and in terms of our domination of the world's market. Because of that success, it's also our hardest case for free trade. ”

State Department. A number of powerful Congressmen finally became fed up, believing that the State Department was constantly giving our trade issues in order to get concessions on other fronts. As a result, since 1962 the United States Trade Representative has been the agency with the exclusive responsibility for monitoring our trade. In other words, their responsibility is exclusive—not that they are the only agency, but that it is their exclusive responsibility to monitor our trade, participate in international trade negotiations, and inform us of variants to our trade throughout the world. In fulfilling its mission, the Trade Representative coordinates with other United States agencies involved in trade.

So why did I pick the motion picture industry? It is natural to look at the United States trade representative because of its mandate, but, as Bruce pointed out, there's a lot of U.S. culture that's exported overseas —there are books, the Internet,

Curb Center Panel Discussion

and music. So why did I pick the motion picture industry? Well, I picked the motion picture industry because it is our biggest success in terms of our balance of trade and in terms of our domination of the world's market. Because of that success, it's also our hardest case for free trade. Just to give you a flavor of what we are talking about, in terms of the success of the United States' film industry, 85% of the films shown in the world originate in the United States. United States' films and television appear in

over 125 international markets. Even in countries that go out of their way to prevent the showing of American films, United States' film products dominate. For example, the European Union (EU) has a series of regulations that are meant to prevent foreign film products from entering the European market. Nevertheless the United States' films

dominate every EU country, from 60% of the screen time in France to 90% of the screen time in Holland. As a result of our success in the international market it is not simply rhetoric when other countries express a fear that the U.S. film industry has the potential to destroy local industries. In fact, the United States film industry was partially responsible for the destruction of the Australian film industry after World War II. Australia had a thriving film industry from talkies until after World War II, at which time the United States and the British film industry overpowered the Australian film industry to such an extent that, for eight years, not a single Australian film was produced. Massive government intervention was required to revive the industry.

In this paper, I concentrate on Australia, Canada and India. I wanted to have a context—that is, not just to focus on what is important to the United States, but also why what is important to us is not necessarily important to the rest of the world. Plus, I wanted to look at countries that were similar to the United States in the sense that they had film industries that they wanted to promote across borders, so they had a vested interest in wanting to have cross-border trade. However, even with that

interest, these countries did not follow the United States' position on cross-border trade. Finding countries that do not support the United States' position on cross-border trade in the motion picture industry is very easy because there is only one country in the world that supports the United States' position wholeheartedly—and that's the Central African Republic. Finding countries that had similar film industries was hard because there's no country

“The question is whether we're better off in terms of national security if we had that result.”

with an industry like the United States, as you can see from the fact that we dominate the world.

My compromise was to look at countries that were similar to the United States in that, they too, gained income from cross-border trade, particularly cross-border trade with the United States. In addition, I wanted to look at examples of different types of trade negotiations with the United States, in order to see if it made any difference if a country was just involved with the World Trade Organization in terms of negotiations of audio visual services, or whether the country was involved with bilateral negotiations with the United States or multilateral negotiations. Australia and the United States have just completed a bilateral trade negotiation, which concerns what are called “audiovisual services,” which I'm limiting within that general structure to film. Canada and the United States are in the NAFTA, which has provisions concerning audiovisual services. And Australia, Canada and India are all involved in the World Trade Organization and the general agreement of trade and services.

So here is the case study in simplest terms. The United States has a huge trade deficit and it

CURB CENTER SPECIAL FEATURE

grows bigger everyday. Our deficit is particularly exacerbated by the fact that our economy is moving ahead of international agreements that govern trade. The general agreements on tariffs of trade which [came out of] the WTO were focused on manufacturing, and our economy is moving more and more to services. More of our gross domestic product comes from services than comes from manufacturing. And because of our increasing the lines of services we have been asking the international community ... to move toward negotiation of services as well as manufacturing. This wish to focus on services is one of the reasons for the shift from the NAFTA to the WTO.

Within the general subject of trade deficits and trade and services, the United States has one huge success story—and that's the motion picture industry. Motion picture production brings almost 10 billion dollars into the United States from overseas every year and naturally, given our deficit in trade and our strength in exporting films, we want as much access as possible. Frankly, our products could fill the airwaves of every country and the screens of every country 24 hours a day, 7 days a week. The question is whether we're better off in terms of national security if we had that result.

There are those who say that our domination of the film industry is in fact important to our national security. So I just want to read you two paragraphs on that:

It is in the general interest of the United States to encourage the development of the world in which the fault lines separating nations are bridged by shared interests and it is in the economic and political interests of the United States to ensure that if the world is moving toward a common language it be English. And if the world is moving toward common telecommunications, safety and quality standards that it be American. And if the world is becoming linked by television, radio and music the programming be American. And that if prominent values are being developed they be values with which Americans are comfortable. Some find the idea that Americans would systematically seek to promote their culture to be unattractive. They're concerned that it implies a sense of superiority on America's part, or that it makes an uncomfortable value judgment. But the real [lesson] of the information age is that setting technological standards, defining software standards, producing the most popular information products, and leading in the related development of the global trade and services are

essential to the world being of any would be leader, as once were the resources needed to support empire or industry.

Now this is not the official United States position on world trade in film. The official United States position on world trade in film basically makes four points. One is that free trade in international film is in accordance with WTO policy. The idea is that one of the purposes of the WTO was to open up international trade negotiations in services, and that one aspect of services is what is called audiovisual services, and once aspect of audiovisual services is film. So we've set up this international mechanism, the countries of the world have come to understand that services all have a cultural component, and they've made a decision as a group—these countries, WTO members, have made a decision as a group—that they are willing to deal with these sensitive cultural issues because of the importance of opening up trade and services. The problem with this is that, although it's true for services in general, it's completely not true when it comes to audiovisual services in film. In fact, as I said before, there's only one country in the world that has joined the United States completely in the question of audiovisual services, and most of the countries who are WTO members have essentially refused to negotiate when it comes to audiovisual services in film.

The second argument the United States makes is that cross-border trade is a necessary element in all film production. The idea there is that films by their nature require large audiences because they have huge up-front expenses, but very few expenses in terms of reproduction. So most of the cost of producing a film is up-front, and then it's much better if ten million people see the film than if five million people see the film. The problem is, although that may be the case, nobody else is getting the cross-border trade that the United States is getting and so, as one commentator pointed out, one reason for the slow pace of negotiation of audiovisual services is that, apart from the United States, few countries are willing to seek commitments on audiovisual liberalization if this requires them to open up their own markets and put further pressure on domestic regulatory regimes. Given the domination of U.S. rights holders in the international audiovisual market, the likelihood is that there will be only one winner in economic terms.

The next argument made is that the United States' dominance of cross-border trade and films

Curb Center Panel Discussion

is primarily the result of superior products and individual choice, and that's what negotiation in international trade is about. You want superior products to cross borders so that people can exercise their individual choice to consume those products, and this is part of the freedom of the world. Professor Baker has a book called *Media Markets and Democracy*, in which he discusses some of these economic arguments and points out that the media industry is one that is very likely to produce market failures, so arguing free markets in that context is not particularly attractive.

The other argument, which is sometimes hinted by the USTR, but not usually said very openly, is that in terms of technology, culture is able to cross borders, and so culture may be diminished in one country but increased in some other country. So Chinese people in Australia can be more authentically Chinese because they have access to Chinese language programs and Chinese foods and

other things they wouldn't have without cross-border trade, that people could be exposed to all sorts of cultures and that this freedom of access really builds culture as opposed to destroying culture.

Further there's an argument that changes in technology make cross-border trade vital for all cultures. Now we have access through all sorts of airwaves, there's the Internet and other new technologies, so we shouldn't think of access to culture as something which is limited –rather it is unlimited, and to the extent that one can take advantage of this technology, all cultures are better off. The problem is that it costs money to get access to that technology, and it's the United States that has the money. So it's the United States that has more of the access.

As someone who worked in a government agency myself, I wanted to make it very clear that there's nothing about this paper that is meant to criticize the United States Trade Representative (USTR). In fact, the United States Trade Representative is doing exactly what it was mandated

to do, which is to have an exclusive emphasis on U.S. trade. But the problem is bigger than the United States Trade Representative in at least two ways. One way is, as pointed out by one of the authors that I quote in this paper, "The great historical paradox of culture is that its principle export of the United States claims to free of any policy on the matter." I would add that we as Americans don't even recognize that we have a culture. Americans talk about how we don't have any food, there's no American food, and there's no American culture; we think of these ethnic cultures, but we don't think of having an American culture. Because of that, I think

“You want superior products to cross borders so that people can exercise their individual choice to consume those products, and this is part of the freedom of the world.”

we have a problem understanding threats to culture that other countries feel. So we keep discussing this problem as though it were an economic problem – as though it were a trade problem – whereas the rest of the world is totally freaking out, to use a technical term, because they see this huge bulldozer of American culture coming through. The problem is that the countries that are closest to us are the countries that are most threatened. Countries like India have what are called natural barriers to trade, meaning that their cultures and their language are so different [that foreign cultures cannot easily penetrate them]. In the case of India, China, Hong Kong, and parts of Latin America, they also have local product that helps them protect themselves from the exportation of United States films. But when you look at countries like Australia and Canada, they have no protection. It's like small pox to the Indians. They have no protection against United States trade and they're very frightened of it. I think that our inability to understand that we have a culture, and our inability

CURB CENTER SPECIAL FEATURE

to understand that what we're exporting when we talk about films is not the same as soap and toilet paper, but actually has other important aspects to it, makes it difficult for us to understand. The fact is that whether they're involved in bilateral trade negotiations with us, whether they're involved in multilateral trade negotiations with us, whether their involved with us in the WTO, they don't want to discuss this issue.

But it's a true fear and I have two examples in the text. One has to do with Australia and what first created the Australian Council for Arts. One of the things that created it was a cartoon that was very popular in Australia in the Vietnam era that had an Australian family watching TV, and the announcer on the TV was advertising the opportunity to have your emotions lived for you tonight by American experts. Canada had been operating under the unwritten British constitution and they finally went through a constitutional process. As part of that constitutional process one of the things that they adopted in their bill of rights were Miranda Rights. Now why did they do this, other than it would be the best thing in the world to do? They did it because the Canadians already thought they had those rights because they were watching so much U.S. television. So here we have a situation where the great foundations of Canadian government are being influenced by "C.H.I.P.s" and other American TV shows. So the fear [other countries] are expressing is not simply paranoia but is quite real.

So my conclusion is that the United States Trade Representative is doing a wonderful job.

However, this problem is bigger than the United States Trade Representative and it's a problem that I think that the United States government and entities like the Curb Center need to deal with. We need to recognize that we have a culture, we need to recognize that our culture is a threat to other countries, and we need to be able to compromise on this because money isn't everything – clearly I'm not an economist – and our national security, I believe,

could be really threatened if we don't recognize this issue. Thank you.

“ So here we have a situation where the great foundations of Canadian government are being influenced by “C.H.I.P.s” and other American TV shows. ”

Berry:

Thanks. She deserves a hand if nothing else for being the first person to invoke the television program “C.H.I.P.s” in an academic context. That may be a first. We'll hear from our two visiting panelists from Washington, D.C. I'll introduce each of them before they talk.

First will be Carol Balassa who, like Beverly Moran, is a native of New York City. Dr. Balassawas educated at Queens College, Yale, and received a Ph.D. in international relations at Johns Hopkins. As her bio in the packet explains, she's held various positions in the offices of the U.S.

Trade Representative going back to the early 80's, positions related to trade policy and practice, especially emphasizing telecommunications, energy, and media. She's been involved in a number of rounds of cross-border negotiations and has a leadership role in what are called investment negotiations with various countries. And her current title is Director of Services Trade Negotiations, Media, Communications, and Energy Services with the office of the USTR. So we welcome Dr. Carol Balassa.

Carol Balassa:

Thank you so much. I want to especially thank the Curb Center for providing this opportunity to come to Nashville. It's the first time I've been in this area of the United States so it's a cultural experience for me. But I especially appreciate the

Curb Center Panel Discussion

opportunity to have a mixture of ideas among practitioners – and I count myself among the practitioners – and the academic community where so much of the thinking on this important issue is taking place. I want especially to thank Dr. Moran for her paper. It focuses on an issue which is receiving increasing attention in various international organizations, not just the WTO. The issue comes up in UNESCO, it comes up in the International Telecommunications Union, the ITU, and a radio broadcast symposium sponsored by the World Bank has recently come to my attention. So we are very much in the vanguard in discussing the issue today.

I'd like to use a good part of my time in addressing some of

the factual questions that appear in Dr. Moran's paper and then turn my attention at the conclusion to some general comments. The first issue I would like to address is the mandate and the formation of USTR.

You are indeed correct that USTR did develop out of the Kennedy Whitehouse in response, in large part, to the State Department's foreign policy orientation in the conduct of trade negotiations. But there was also concern about the Commerce Department's representation of the business community and the Labor Department's representation of the unions. There was a feeling that there needed to be an agency that coordinated these different interests within the U.S. government that led to the formation of the Special Office of the U.S. Trade Representative. Over the years "special" disappeared and it has become Office of the U.S. Trade Representative, or "USTR" for short.

In developing U.S. trade policy, USTR is responsible for coordinating the different views of the various agencies of the government. When we go out in our international trade negotiations we represent a consensus of views, including the State Department's interest in foreign policy and the Treasury's interest in fiscal policy. If I'm dealing with telecommunications issues, the FCC will participate in the negotiations although it's an independent agency.

If I'm doing energy negotiations the Department of Energy is represented. If we are talking about competition policies the Justice Department is represented. So we go out having dealt with various points of view when we get to the negotiating table.

Turning to the mandate of USTR, Dr. Moran states in her paper that the objective of USTR representing foreign trade policy objectives is

“The challenge for the trade negotiator is to balance the regulatory policy with the idea of removing unnecessary barriers to trade.”

unbridled support for free access to free markets. My comments that follow are going to be directed specifically to services rather than to manufactured goods, which you focus on in your paper as well.

Ever since the beginning of services negotiations we have encountered the tension between the need to regulate most services industries and the idea of removing government barriers to trade.

Services include telecommunications, financial services, transportation services, medical services, education services—all areas in which there is heavy regulation in most countries. The challenge for the trade negotiator is to balance the regulatory policy with the idea of removing unnecessary barriers to trade. We do this by taking into account the ability of the regulator to continue his regulations but removing such obstacles to trade as limitation in the number of service providers, or limitation in the amount of their service transactions, or limitations in the value of their service transactions. Those are what we call the market access restrictions. It is a far cry from totally free access to free markets. It is an adjustment to the reality that we face in most nations.

The second point on which I'd like to focus is the view that the United States treats audiovisual services as just a type of commodity, and it is indeed

CURB CENTER SPECIAL FEATURE

almost a sub-theme throughout your paper. First, the paper implies that, because the audiovisual sector may have special cultural characteristics, the sector should not be subject to the trade disciplines on other service sectors. Such an argument neglects

commitments; they raised their hands and they actually inscribed commitments to open certain aspects of their market to trade in audio visual services. Since the conclusion of the Uruguay round, countries that are acceding to the WTO, some seven

or eight, have also committed to audiovisual liberalization in some respects.

“ So there is sufficient flexibility for every country to write down its regulatory policy and still follow the general tenor of trade rules. ”

**A u d i e n c e
C o m m e n t:** Not all.

Balassa:

No, not even the United States commits to [total market

that other sectors also have unique characteristics for the purpose of fulfilling important social policy objectives and that there has been flexibility to accommodate such specific concerns. In financial services, for example, we have an entirely separate paper to deal with the special fiduciary concerns. For telecommunications there is a special reference paper that looks at the special requirements in the telecommunications area. Second, the criticism of culture as a commodity position. If you go back in time, the economists phrased this years ago as the Zolar versus Cola debate. It assumes that profit has no place in the world of culture and that, if it does, it contaminates culture.

The argument ignores the fact that business and regulatory considerations affect the ability of the artist to create and distribute both to domestic and to foreign audiences the outcome of his creative effort, and indeed you have referred to the high cost of distributing product. Creating and distributing audiovisual content is costly and in the area of culture the commercial success is uncertain. Access to international markets is necessary to help recoup production costs. Predictable and clearly defined trade rules will foster international exhibition and distribution opportunities and provide commercial benefits that audiovisual service providers must have to continue their artistic endeavors. And along these lines let me note that, in the Uruguay round, the previous round of trade negotiations, there were twelve other countries along with the United States that did schedule what we call market access

access], and I'll get to that in a minute. And within the current round of negotiations, what we call the Doha Development Agenda, there is a group of like-minded countries, many of them developing countries, who have organized themselves into a fringe group to foster liberalization of audiovisual services. The reason for the United States [to do so] is clear, but why other countries, why smaller, why developing countries?

Because the trade benefits to liberalization are helping their growing export industries. Clear trade rules are more helpful to smaller developing countries than they are to the United States, which has plenty of its own muscle to get what it wants without the benefit of trade disciplines. We know that when markets have a wide variety of cultural content available there will be more investment in the infrastructure, especially the telecommunications infrastructure, because an array of content fosters viewers, and that is what investors are looking for. So the investment money follows the open market in content.

We know that that low-cost American programming is beneficial to start-up broadcasters around the world because it permits them to get over high entry barriers to the market and establish themselves. We have done studies which show that once established they will then turn away from foreign broadcasting and devote their limited dollars to developing local production. We know that American channels will invest in the countries in which their programming is exhibited. They consider

Curb Center Panel Discussion

that to be a good business policy and they will invest fairly heavily in local content. Finally we know that having a wide variety of movies available helps to stimulate the development of modern movie theaters and create a movie-going public that will watch not just foreign films, but domestic films as well.

The third area I would like to turn my attention to is the WTO rules themselves. They in large part reflect the flexibility in negotiating objectives that I have described for the United States in its services trade objectives. When you make a commitment in the WTO to open your market, you can write that commitment any way you want. In fact, you can [find examples of this] on the Internet, but before the schedules were available digitally, there were these thick books in the USTR Reading Room and you would flip through them and see the way in which a country inscribed its schedule. For example, in audiovisual services, the United States for motion picture production took an exception, and we wrote it in for NEA subsidies. We also took an exception for foreign ownership limitations on radio broadcasting and for cross-ownership restrictions. So no one [makes an exception-free commitment]; the [country that] has the most open regime is New Zealand, but even they have inscribed an exception to allow for subsidies from our re-programming. So there is sufficient flexibility for every country to write down its regulatory policy and still follow the general tenor of trade rules. Dr. Moran mentioned not only the quantity, but the quality of American exports—in particular the question of obscenity. Both the GATT, which deals with manufactured goods, and the GATS, which deals with services, have provisions that allow countries to take exceptions to protect public morality and social order; in fact, you don't even have to write an exception for what is already part of the GATT's rules—that is understood. Of course you can, this is not totally free trade, you can restrict imports of motion pictures that might cause social unrest for example. There are rules in both the GATT and the GATS that permit countries to impose export restrictions on exports of cultural artifacts. The rules are flexible enough so that countries can enter into co-production agreements which by their very nature are discriminatory among third parties, but it is recognized that co-production agreements provide countries, especially smaller countries, access to funding.

And finally, the area of subsidies, which most countries engage in, and [which is related to] the nature of the industry where it used to be true that 95% of the cost went into the production of the first print; with higher marketing costs it is about 90%. Most countries in the world today do need to subsidize their motion picture industry. There are no rules in the GATS to restrict subsidies. There is a rule that requires an exception for those subsidies to be administered on a non-discriminatory basis. But most countries, and I've already mentioned the United States and New Zealand, do write in restrictions saying that we are going to limit our subsidies to American citizens or for [domestic] programming.

Balassa:

Having focused on factual statements, let me conclude here with some general comments. My interpretation of your paper is a bit different from what you have presented. I think there is a struggle between the recognition that many countries perceive the export of American programming as in some way a threat to their culture, [...] and the problem of how to regulate culture and still preserve individual freedoms. At the conclusion of the Uruguay Round the United States had a very generous offer on the table in audiovisual services. We had been in negotiations with the European community to keep their offer on the table. At the last minute the European community withdrew their offer, and the question arose if the United States would keep its offer out there since there was nothing from one of our major trading partners to balance it; we concluded that we should keep our offer out there. We did it in part because it served as an example—it was good trade policy to hold up a model of what a liberal regime could look like—but we did it for another reason. There is no way the United States could restrict the importation of foreign films on the basis of country of origin. We have a First Amendment right which extends to movies and to television programming. And it is one way in which the U.S. view of culture as a commodity differs importantly from our trading partners, because we do put an important limit on how far we are willing to go. That culture is protected by First Amendment rights and it is an issue which appears when you start talking about governments imposing quantitative restrictions of quotas on the importation of films.

CURB CENTER SPECIAL FEATURE

Once you start down the road of permitting restrictions on the importation of cultural products, you are getting into an issue of governments developing cultural policy, and then you raise the question of whose cultural policy are they representing. Is it of the individual, or is it of some idea of what a state policy on culture should represent? Then you can go to the next step, and you get into some of the totalitarian regimes we remember all too well – Stalinist or Fascist – restrictions that are imposed in

the name of cultural policy. And I am not saying that there is not a problem. I think the problem needs to be carefully defined. I think the paper touches on cultural issues that represent a number of different problems. It is indeed the domination, or let's say the preponderance, of U.S. motion pictures in movie theaters, but France, for example, [which shows about 65% of American movies], could restrict the importation of those films if they wanted to.

They don't do it because the movie theater owners in France want American films because it helps keep the movie theaters open. So we get again into the trade benefits. But you also have the frustration of local artists who feel that they don't have an opportunity for their voice to be heard. You have concerns; I've heard this in UNESCO discussions, Caribbean broadcasters who want access to American technology and broadcasting equipment. You have the concerns about obscenity, but it's not the single problem. There's a multitude of problems, and unless you clearly define what is the problem you are talking about, it becomes extremely difficult to develop a reasonable solution. Trade, in fact, can help to address a number of these problems, but not all of them. I agree with you that in some instances there is market failure, but the route that I would suggest is to look carefully at the judicious use of subsidies to address legitimate areas of market failure with the idea that subsidies will

help to create more choice, and stay away from areas that restrict options, and then see where the discussion will take you. Thank you very much.

“Once you start down the road of permitting restrictions on the importation of cultural products, you are getting into an issue of governments developing cultural policy, and then you raise the question of whose cultural policy are they representing.”

Berry:

Thanks. Our other panelist is Tim Reif. He was educated at Princeton and the Columbia University School of Law and, as his bio in your packet explains, his extensive involvement in the law of trade includes work as international trade counselor to a couple of Washington law firms. He's been council for the USTR, a legal advisor for the International Trade Commission in the U.S., he has co-chaired symposia on the WTO and he teaches on the side—finds some time somehow to teach on the side at Georgetown University's law school. Mr. Reif is currently the chief trade counselor on the Democratic side for the House Ways and Means Committee.

Tim Reif:

And my thanks also for the Curb Center for pulling together I think a very interesting conference. I'm going to be brief because I think we want to get on to the discussion session and there's no way that I can even begin to compete with the wonderful remarks that you've heard from Beverly and from Carol.

Curb Center Panel Discussion

Reif:

So I'd like to make just four comments on Beverly's paper and try to do that as quickly as I can, and try to be a little provocative as well as we have a good discussion section. The first issue is context, context for regulation of cultural trade across borders. And what I would like to contribute here is that the way I come to "cultural issues" in trade may be a little bit different from how the paper sets it out. Where Beverly says there's no agreement on the appropriateness on this subject as a matter of trade negotiations, I would submit, at least as a proposition this morning if there is no subject matter that is inappropriate per se for trade negotiations, that the world in which I grew up and maybe some of us grew up in which there were domestic issues, the subject of domestic regulation and then over here there was something called trade negotiations, these two worlds have now collided and are completely intersected and becoming more and more entwined with each passing year. And so the question then becomes not whether this should be subject to some form of regulation in the WTO or free trade agreements like the agreement we just completed with Australia, but what form of regulation are we going to adopt. I would suggest very briefly, just for those who may be history buffs in the room, that what we are undergoing in the international level today over the last decade or so and reaching into the next couple of decades is very similar to what our country went through about a hundred years ago as we integrated as a national market from different state markets, state-based economy going into the industrial revolution and then around the 1890's when Congress began to regulate antitrust, labor standards, and eventually all the full range of subjects that became a matter of federal regulation in the 20th century...

There needs to be rigor and discipline as new areas become integrated into trade policy— first, in terms of the justification for policy intervention in a particular area, and second, with

respect to policy. Let me suggest three particular areas of rigor and discipline approaching cultural issues. First is definitional. I'm not even going to try to define the concept of culture, but I think that that is something that we need to grapple with. Bruce spoke at the beginning about our culture being propagated through fast food restaurants and things of that kind, which I think is also correct. But Beverly has, I think wisely, as least for purpose of discussion, limited hers to a form of fine arts and motion pictures. So there needs to be a definition

“ There needs to be rigor and discipline as new areas become integrated into trade policy— first, in terms of the justification for policy intervention in a particular area, and second, with respect to policy. ”

of what's culture. There also needs to be a definition of what is regulation.

Secondly, as a negotiating entity, as a country we need to adopt a consistent approach to regulation in many, many different areas. Let me just highlight the vast difference between the way the United States currently negotiates intellectual property rights – a very valid subject of negotiation, where in, for example, an area like copyright, the office of the Trade Representative is negotiating issues where the ink is barely dry on law that may have been passed, regulations that may have been written, or court decisions interpreting those laws and regulations – whereas in the area of labor standards we are not even willing to ask countries to adopt the most basic international standards approved by the International Labor Organization, not even discussing American standards. So there needs to be a degree of consistency of policy in this area as we begin to move in that direction.

Third, there needs to be an analytical logic and rigor to the basis for regulation. Here again let me offer a subject that is not culture, but one where regulation has become intruding recently – this is the area of prescription drug reimbursements. You

CURB CENTER SPECIAL FEATURE

might not have thought that, in this case Australia's scheme, as a national health reimbursement scheme for prescription drug purposes would be a subject of trade negotiations. It was and is, and there are provisions related to transparency in the recent free trade agreement. But the question is in all of the discussions with my good colleagues at USTR, the question never arose why are we negotiating in this area. One group of individuals, including the health staff on my own committee, said this is not subject to trade negotiations, this is a subject of domestic regulation—with which I did not agree. And another group said entirely, "Well, I don't care what we do to Australia's reimbursement scheme. We are here to promote the interest of our pharmaceutical exporters." Neither question, I would submit, was the right question. The question should be what, if anything, was this foreign government program doing to inhibit American trade in a legitimate way? What discrimination was occurring with respect to American product? And looking to that route and then elaborating on the regulation from that particular question, which has its roots in 50 years of GATT law, is the way to approach a regulatory scheme. And I would submit that, in the area of culture, the same kinds of questions need to be asked.

The bottom line I would submit with respect to this issue of context is [that] we need to bear in mind as we go into any area of regulation that there needs to be a balance between what I call "shaping" trade and "policing" trade. Shaping trade goes to advancing at least ostensibly non-commercial objectives, such as the promotion of local culture. And policing trade means making sure that governments don't play games to try to advantage local competitors for simply commercial reasons. I think that occurs in a cultural area as it does in every other area.

Context. The second question, is cultural regulation special? Clearly the answer in my view is yes. It is different from other forms of regulation dealing with pharmaceutical products or intellectual property, although cultural regulation in part does deal with intellectual properties as Beverly points out in her paper. But I'm not sure how much more we can get out of this answer. Is cultural regulation special? Yes. On the one hand the power of ideas is critical I think to the development of the international community. Not so that the United States can simply foist its view of how things should be on others, but because

sometimes fairly positive things can evolve deliberately or by chance out of American culture. Liberalization in society we've seen in the last 20 years in Russia, the fall of the Berlin Wall, in China even, I submit in some strange way the example of "C.H.I.P.s" and the Canadian bill of rights, the fact that Canada adopted a constitution from an American perspective. I think probably at this point most Canadians would agree was very positive stuff. Now there's also a double-edged sword to that. I lived in Egypt about 25 years ago just after college and the most popular American television program at the time was "Dallas." And so the students in this small town where I was teaching at a university thought that all Americans had no interests. We asked them one morning to list what they thought an American system of values was and then list what their system of values was. Theirs was religion and family and things of that kind. Americans' was basically money, and money, and a little bit more money, and your career; and then somewhere around 12th or 13th came religion or family – which I don't think is true of our culture and our society. There is actually some danger but that just promotes the question of what we do about that. Where does the line come that we block the export of "Dallas" or other kinds of our culture? I think not. So there's the power of ideas that can be very positive, but at the same time there's the need to preserve indigenous cultures. So yes, it's different, but where does that lead us? Do we exempt it from international regulation of commercial flows? I don't think so. Do we set up special parameters for regulation? Yes, but the question is what might those parameters be.

The third subject I would like to discuss then is at least to talk in conceptual terms about what the parameters of regulation might be. The first question to ask is, what is the goal of regulation? Why is the government seeking to regulate its cultural industry? The answer will vary from country to country and I think Beverly's comments suggest this. In Australia they wanted to preserve a small indigenous industry. Canada had a [similar] case that occurred about six or seven years ago involving country music television; I think the motivation was largely commercial, in that instance utilizing a provision in the Canada-U.S. free trade agreement. And so you have to ask why a country [is acting a certain way] and then design a solution that responds to the particular issue. Not all forms of protection and promotion are created equal. I

Curb Center Panel Discussion

think Beverly's comments and Carol's comments suggest this. There is a difference between film schools and festivals and subsidies that promote or can promote diversity of culture, versus quotas in local content, which tend to be more restrictive. Does that mean those will never have a place in trade agreements? No, but it means I think that they should be subject to a higher level of scrutiny and skepticism. How do you decide what form? Firstly, I would suggest the forms of regulation should be as transparent as possible so that everyone can understand what the motivation is and what's being protected or promoted. Second, there should be an examination of the impact on competition. And thirdly is the question of a guaranteed market share versus a right to compete.

Let me make my last comment on how American policy is being developed and here express a degree of discomfort, but not with Carol or any of her colleagues specifically since I'm an alumnus of the agency and I think it is still one of the finest agencies in Washington. But because I think that the agency does not fully appreciate at this point in time how much its work is now also the work of many other departments that have other areas of expertise. Here let me say very briefly that recently, from the perspective of the Congress listening to the way the Trade Representative's office has been designing policy in areas like telecommunications regulation or pharmaceuticals regulation, [the focus on issues of culture] suggests that where American regulation in these areas is subject to Congressional hearings, and the long process of introducing laws, [which can include receiving input from] the business community, NGO's, and citizens. And then the agencies start fighting over what the law means and this goes on and on and the courts get into the act and they give you feedback. That process is now collapsed into a few interagency meetings chaired by USTR, which I think if you sit back and think about it, is a point of significant concern. So how

we develop these regulations, or what the United States seeks to implement as regulations in trade negotiations with other countries, I think, is subject to question at this time.

Berry:

Okay. And clearly, Bill, we need a future all day conference on whether or not the television show "Dallas" is or is not representative of U.S. culture. To me that's a

“There's this argument that cultural exportation and reproduction makes it a safer world for us in some sense, or a more secure one.”

controvertible point. Before we go to questions, let me ask if any panelists feel the urge, impulse, or need to respond to things they've heard, especially Beverly but others as well? Is there anything you want to respond to?

Moran:

I just want to thank you both. I really appreciate the time that you've taken and I will certainly reflect your comments in the final draft.

Berry:

Okay let me then use moderator's prerogative and throw out a question and take others. I think one of the most provocative points that Beverly makes in her paper that she alludes to here [...] is this idea that she mentioned that the domination, or as Carol calls it the preponderance, of the film industry serves the interest of national security.

CURB CENTER SPECIAL FEATURE

There's this argument that cultural exportation and reproduction makes it a safer world for us in some sense, or a more secure one. And I think that's a fascinating argument. I'd like to hear the other panelists respond to that, maybe, since you both have government positions, not so much from the official positions of your agencies or your government positions, but from your own expertise in trade going back over many years. What is the connection between cultural trade exportation/importation and national security? And what about the argument that Carol doesn't make, but reproduces, that our domination or preponderance of influence in worldwide film is a matter of national security?

Reif:

I don't have any good answer to that so you've asked a good question. But I think there are really two sides to it. I think that clearly the United States since President Wilson has had the notion that it would be safest in a world of like-minded countries, countries that have democratically elected governments and that tends to go along with freer markets. So in that broad sense clearly that's American policy. I believe that most people buy into that general proposition. Now, the second issue is how specifically does the preponderance of American culture either advance or not advance that objective. I think that to speculate on that without having given it deep thought would be irresponsible.

I think my example of... living in Egypt before some of the greater tensions with the Islamic world arose, or just right at the cusp of when they were arising – President Sadot was assassinated I think a year later – suggests that the preponderance of American culture may or may not in a given situation enhance the goals of Americans as wanting to live in a place in the world where people more often than not share our values. And it also raises a question as to whether one particular set of cultural

values leads to adoption of that broader societal set of goals [such as] democracy more so than others. Would culture coming out of South Africa or coming out of Uganda or coming out of somewhere in the Middle East necessarily not also lead to those objectives? I certainly couldn't say that.

Berry:

Carol, do you want to give this one a shot at all?

Balassa:

Well, there's an aspect of the question that I think needs to be developed. It's not only the preponderance of American culture which creates resentment, but the flip side to it is the perceived difficulty on the part of foreign artists, and I cover a broad range of programming artists here, in penetrating the U.S. market. I'm not saying that the

“Would culture coming out of South Africa or coming out of Uganda or coming out of somewhere in the Middle East necessarily not also lead to those objectives?”

perception is correct but to the extent that it exists, it fosters resentment on the part of those who might very well enjoy American culture, but then turn around and say “why do we have so much trouble getting into American theaters” or “why can't we have our programming shown on American television.” Now we could have another discussion and I could come equipped with statistics to show that this is the perception which is in part incorrect and in part changing. One need only look at what's happening in downtown Washington. There had first been a disappearance of movie theaters that showed foreign movies and then suddenly there's an emergence of very modern theaters devoted to

Curb Center Panel Discussion

foreign films. So it's a question I couldn't possibly begin to answer, but I could at least flesh it out to say that the other side of the question needs to be asked, which is the ability of foreigners to make themselves known in the American market... And so I think the question needs to be expanded to that part.

Moran:

This is slightly off the topic and it's something that I brought up at the first Curb Center event, Dr. Gorman's speech last year, and that is the preponderance, to use your word, of American film in the rest of the world might or might protect the national security for the United States. I think it's actually a threat to the security of black Americans in the sense that as a black

American who has traveled throughout the world, and I think many black Americans have this experience, the image of black Americans in the rest of the world is shaped by United States film, and the image of black Americans in the rest of the world is as rapists and criminals and this is true in Africa as much as any place else. Now when I made this point at the inaugural lecture, one of the members of our faculty came up to me afterwards and informed me that in the 1920's the Rockefeller family approached the White House and asked the White House to have discussions with the United States film industry because the United States film industry was creating such negative images of Latin America that it was making it difficult for the Rockefeller family to have good economic relationships in Latin America; then you actually see a shift in the representation of South America in American film as a result of this. I think Tim and Carol both made the point that part of American culture which is very strong and very important to all of us is freedom of speech and free access to information, and that of course creates a very difficult situation in this regard. But I think that it's important to black America, and I think if it's important to black America, it either is or should be important to the rest of America that there not be an American population that is so poorly represented in the rest of the world that our mere presence strikes fear in the hearts of people on the streets. I think this is a very important issue and one that I would like to see the Curb Center work on more.

Berry:

Let's bring some folks in. I'm a great admirer of Professor Baker's work on free speech so I'm delighted to bring him in first.

Question:

Thank you. I particularly want to thank Beverly Moran for the paper written. It is fascinating and I now understand that Aristead went to the Central African Republic primarily to see U.S. film. The question I wanted to raise was the slipperiness of the terms "subsidy" and "quota," and that can be focused on either term in terms of some of the policies that, at least as quoted in the paper, that the U.S. is taking trade negotiations about subsidy, but I wanted to raise [this question]. To put it in context, I think what an economic or political analysis could show is that in many countries, though not in all countries, various forms of restraint on trade and movies — cultural products — would be needed to promote both what local publics want to receive and in order to promote global democracy. In those contexts the right formulated restraints shouldn't be opposed by international law. That's not true everywhere. For instance, in countries that are dominant producers, one of their great needs may be greater and easier and cheaper access, so they don't want a regime that has a parallel system of rules going in each direction. The U.S. needs, for instance, more influx from the rest of the world, plus other places in the world need more production, better production, global [production]. But the problems with U.S. exports aren't that they aren't wanted and that they aren't valuable in the countries they go to, but the competitive effects they have in advantaging local industries and local production[...] Subsidy is what's needed but quota is what's [discussed], but then how do we use the term [quota]? If we use the word [quota to say] only ten American films came in, then you've got the biggest American films, probably the ones that are the most destructive vocally, it would exacerbate the problems. It wouldn't help at all. But if you said something like only certain percentage of the films shown can be American in theaters, that's not a quota that kicks stuff out. That's a quota that effectively subsidizes local but does it mean that you have to have local in order to show the U.S. [films] so that [there will be subsidization of] local musicians on the radio

CURB CENTER SPECIAL FEATURE

and local films in the theaters. When those two different terms of quota get combined as equally objectionable you have a way of securing the types of regulations that in fact will promote local production[...]

Reif:

Well let me make three quick comments in response and you probably know a lot more about this than I do; but let me offer three things. Firstly, what I said was not that quotas or local content requirement should per se not be used, but that they were subject to a higher level of scrutiny because, if they do provide a subsidy in the indirect ways that you suggest, that traditionally in the GATT area that is subject to a higher degree of questioning. Whereas a subsidy, a nonbudget subsidy that's paid through whomever might qualify for the subsidy, requires the government to have an outlay; it's typically a more transparent form of favoring a particular competitor over other competitors. So in the traditional GATT context that's a more attractive way of entering into a market place.

Secondly, local content restrictions are not universally rejected by the U.S., nor should they be. The agreement with Australia contains a very intricate set of protections for the local industry there. You may not have seen that yet. It just was published a few days ago and most people have other things to do than to wait for the Australia text to come online.

Thirdly, I think one of the most interesting things that was raised in Beverly's paper is this issue of the position of the U.S. industry economically. I think there ought to be an economic analysis performed of what the dimensions of our market dominance are around the world or in specific instances, what the barriers to entry are, the traditional kind of thing that if I were an economist I would be talking about. To perform a serious analysis of that kind, we really need the analytical data underlying it to support our conclusions and I have not seen that. Beverly has a number of statistics with respect to what the market shares may be overall or in particular situations, but I think we need more than that to perform the kind of analysis that's needed here.

Berry:

Are the subsidies that would come indirectly out of these kinds of local content quotas, it that hypothetical or is that real? In her paper, for example, Beverly talked about these local content restrictions that exist on television. Countries like New Zealand (I think is one of them) where there are rules that during prime time you've got to be showing locally produced programs, you can't be showing "Dallas." So my question is, does that make for real subsidies, or is this just a sort of hypothetical theoretical notion that these kinds of content requirements will elicit subsidies? [That is,] are countries subsidizing their cultural production?

Reif:

The simple answer, and again I'm not an economist, but if you reserve a certain amount of airtime, let's say for local programming, that creates a demand and therefore those stations are going to have to buy the programs from somebody, and therefore somebody is going to have to produce them, and that creates its own marketplace. So in fact it does create a subsidy, if you will, for that kind of economic activity.

Berry: Let's go to other questions.

Question:

[Regarding the examples of regulations for television], I think maybe an alternative or perhaps useful way of stating it is, yes it is a real subsidy, but there's a question about who pays the subsidy. You can imagine sort of the most direct[...] subsidy would be an appropriation of the country's general use [funds] to produce television programming or movies or patents [...] or even a direct grant for resources such as radio frequencies for public television, or even a direct appropriation for producing programming for public television like the Corporation for Public Broadcasting. So you can have a variety of different levels of subsidies, and I think one of Tim's points was that if you are going to do it it would probably be good to do it in a transparent way so people know what is being subsidized and who is bearing the burden.

If I could just for a moment comment on what Professor Baker was saying, I would say that a

Curb Center Panel Discussion

subsidy is something that increases the range of choice and a quota is something that limits the range of choice. Now, as Tim said, there may be circumstances under which a policy that limits the range of choice turns out to be in the public interest and your sort of intermediate example or sort of mixed example of, in essence tying the number of foreign films to the number of local films, that certainly has the effect of decreasing the [impact on] local films, but it also has an effect which you might think was a [restriction on] the choice of foreign film. So this sort of pure way of dealing with [subsidies] might be to directly subsidize the production of domestic films, possibly to directly subsidize movie theaters, or directly subsidize the local distribution of locally produced films. I mean there are sort of more pure and direct ways of advancing that interest.

Question:

[...] In Latin American countries, for example, while they “consume large quantities” of American films, they often assign different meanings [...] to it and incorporate the film into their own cultural experience in unique and different ways. So from a cultural point of view to me, it seems that the relationship between the public and the media [...] that they have may be the most important effect of culture. In other words, it’s the people that make the culture, not their local producers or their foreign producers. What’s troubled me most in the American trade policy recently along these dimensions [...] is the fact that USTR is very aggressive in pressing for changes in intellectual property laws. We have new maximalist IP regimes that have been imposed on countries, including Australia. I’ve looked at that Agreement, and all of the protections for the local Australian film production. There is absolutely no protection for the local Australian public who now find that their rights to interact with media are going to be severely

curtailed [...] – there’s a whole regime that’s in effect and Tim mentioned this regime. The regime is highly controversial, to even the countries that have adopted it – the United States being one – and yet you see in the trade context rather than waiting to allow intellectual property laws to grow internationally in the traditional role [...] we have a situation where the USTR is actually going to do something very different, which is pressing a

“What’s the role and responsibility of the U.S. and its trade policy to balance these things that were so articulately described there?”

particular and not consensus view of intellectual property at all. It is, however, the consensus view of the American motion picture industry, not surprisingly. So I’m wondering what role the relationship between the public and their culture has to play in this and, as the dominant exporter of intellectual property products, what role and responsibilities do we have perhaps to take more seriously the ability of other countries to shape their own balance between the rights of copyright owners on the one hand and the rights of public to access, play, sample from, [on the other]?

Berry:

That’s a big question. Anyone want to take that on? It’s kind of the central question of the panel in some ways, what’s the role and responsibility of the U.S. and its trade policy to balance these things that were so articulately described there?

CURB CENTER SPECIAL FEATURE

Reif:

Let me say two quick things. If we are striking the right balance in our policy today I don't think we are getting there the right way. I don't think that the kinds of inputs from various perspectives are being incorporated appropriately into our policy. And then secondly, I guess, is the question of what is the right balance. I won't, since you are going to be addressing that more later.

Berry:

Since USTR is at the center of this panel and probably a lot of us in this room are not intimately familiar with the working so the USTR [an appropriate question is] do the USTR, does its orientation toward trade and cultural products and things – does it change with political winds and changes in administration, or is this one of those areas of policy that's been pretty consistent across changes in the executive branch and the political winds in Washington?

Balassa:

I would say there's a fair amount of consistency over the years and trying to find a balance between respecting the cultural concerns that we've been discussing here today and removing what we tend to call unnecessary trade barriers. In many cases, we are looking for ways in which countries can regulate or protect their domestic industries, but in a less trade restrictive manner, and that's where you get for example into the question about quotas. But I just want to add something about quotas and about the U.S. position in general and the current negotiations. In fact, this might give you a baseline on which to review the role of U.S. trade policy. In most instances, in the current round of negotiations, what we are doing is going out and asking countries to subscribe to what we call a standstill. We are asking them not to change.

There are some exceptions here, but for the most part we are asking countries to write down what their current rules and regulations are with the idea that the market access that we enjoy is sufficient, and that from the business or trade point of view, what the businessman needs is to

know what the rules are and, especially in an area such as television and movie distribution, to be sure that those rules are not going to change. We are not asking countries to do away with their current regulatory policy and that goes, for example, to the European community, which has a broadcast directive in place which is was a subject of much discussion in the Uruguay Round. We are not asking for the removal of those quotas and I'm getting here now to the question that was asked previously about quotas. We understand the role of quotas and in most cases we are willing to accept them.

Berry:

We have just a couple of minutes left on time so it's the Center Director's prerogative to ask a question.

Bill Ivey:

This is a question for both Carol and Tim... The reason I ask this question, what are we to say, that because so much criticism of the impact of our trade [policies] in cultural stuff lands on the operations of the USTR's office fairly or unfairly. [...] First of all, and this relates to another of Tim's comments, is there currently a mechanism for these kinds of soft issues – cultural impact, how it affects homeland security – however you see it? Is there currently a mechanism for these kinds of concerns to work their way into the negotiating process or the agenda of the USTR's office, and if those mechanisms aren't there now, should they be put in place, or is your sense of what the USTR's office is about how to structure [itself], its corporate culture, such that it would be better off to pursue these conversations and related solutions to the content of the culture and how [it] is pursued in different international settings? Place that argument in conversation and policies in some other place, is that clear?

Reif:

I think the USTR is institutionally capable of dealing with those challenges that face it. Some would say that in recent years as people are running around [in the streets] and issues like this are coming up that USTR instead of reaching out for, as its mission clearly is the issue of trade, clearly

became something it was not. When I got into this field [the feeling was,] “you’re in where, you work for whom, we’ve never heard of them.” People have heard of the USTR now. As that has happened, some would suggest that instead of reaching out to meet the challenges USTR has more and more retreated, feeling that all of those who question one or another aspect of its policy are enemies, and I think that has hurt the ability of the agency to be as effective as [it could be]. That’s not to say it’s not being integrated in any areas. There are dialogues. So I don’t think there’s a need for a new institutional structure.

Balassa:

Before I spoke about USTR’s role in mediation [of] the points of view of the different agencies, I failed to discuss both USTR’s role in reporting to the Congress – we are a creature of the Congress – and our role with regard to the private sector. Private sector refers both to industry and to NGO’s who in recent years have played an increasingly important role in the formation of U.S. trade policy. We have both a formal advisory committee system where private sector and NGO’s are represented and then an informal system where we consult regularly with interested parties. So I would agree with Tim, we are institutionally capable of expanding to hear different voices. Yes.

Berry:

Good note to end on and we need to end on time. I believe the next panel starts at a quarter past, is that right? So let’s thank this panel.

sports

