

The Treatment of Cultural Services in Central American Countries' Preferential Trade Agreements*

El Tratamiento de los Servicios Culturales en los Acuerdos Comerciales Preferenciales del Países Centroamericanos

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ABSTRACT

Cultural products (including goods and services) encompass visual, performing and literary arts, as well as newspapers, magazines, books, films, video and music recordings, radio and television, either in traditional or digital format. To the extent that they reflect the cultural identities of states, their treatment in international trade has been debated as to whether, or the extent to which, they should be exempted from trade obligations. The proliferation of preferential trade agreements and of digital platforms has rendered the debate ever more salient. The article summarizes the provisions on

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cultural services in Central American countries' preferential trade agreements and discusses the scope of these provisions, in light of the cultural policy measures involved and states' ability to pursue cultural policies. The countries considered are those belonging to the Central American Common Market, namely Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. These countries share some characteristics which make them worth considering in regard to the trade and culture debate. They also vary widely with respect to the number and scope of their commitments and/or exceptions relating to culture within the preferential trade agreements to which they are parties. In turn, such significant variations are primarily attributable to the importance each Central American country attaches to the protection of its cultural sector.

Keywords: Central America – preferential trade agreements – cultural policies – cultural services – cultural provisions/commitments/exceptions.

RESUMEN

Los productos culturales (incluidos los bienes y servicios) abarcan las artes visuales, escénicas y literarias, así como periódicos, revistas, libros, películas, grabaciones de video y música, radio y televisión, ya sea en formato tradicional o digital. En la medida en que reflejan las identidades culturales de los estados, se ha debatido su tratamiento en el comercio internacional en cuanto a si deberían estar exentos de las obligaciones comerciales, o en qué medida. La proliferación de acuerdos comerciales preferenciales y de plataformas digitales ha hecho que el debate sea cada vez más relevante. El artículo resume las disposiciones sobre servicios culturales en los acuerdos comerciales preferenciales de los países

centroamericanos y discute el alcance de estas disposiciones, a la luz de las medidas de política cultural involucradas y la capacidad de los estados para llevar a cabo políticas culturales. Los países considerados son los pertenecientes al Mercado Común Centroamericano, a saber, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y Panamá. Estos países comparten algunas características que los hacen dignos de ser considerados en el debate sobre comercio y cultura. También varían ampliamente con respecto al número y alcance de sus compromisos y/o excepciones relacionadas con la cultura dentro de los acuerdos comerciales preferenciales de los que son parte. A su vez, estas variaciones tan significativas se deben principalmente a la importancia que cada país centroamericano otorga a la protección de su sector cultural.

Palabras clave: Centroamérica – acuerdos comerciales preferenciales – políticas culturales – servicios culturales – disposiciones/compromisos/excepciones culturales.

1.- INTRODUCTION

Alongside visual, performing and literary arts, cultural products (including goods and services) comprise newspapers, magazines, books, films, video and music recordings, radio and television, either in traditional or digital format. To the extent that such products reflect the cultural identities of states, their treatment in international trade has long been debated as to whether, or the extent to which, they should be exempted from trade liberalization and its associated obligations¹. The trade and culture debate essentially pertains to the difficulties of conciliating policy space and flexibility for public authorities in the conduct of cultural policies², on the one hand, and predictability and non-discrimination in international trade exchanges, on the other. The stance of governments and peoples on the debate rests on varying combinations of principles and interests³.

In recent decades, the proliferation of preferential trade agreements (PTAs), upon which liberalization initiatives have rested with the stalemate of multilateral trade negotiations, and of digital platforms, through which cultural contents are increasingly created, distributed and accessed, have rendered the debate ever more salient. A key episode was the adop-

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- 1 These mainly involve market access (MA), i.e., the conditions set by states for the provision of goods and services into their territory; and national treatment (NT), whereby a country must treat imported products no less favourably than domestic ones as regards internal taxes and regulations. The latter corresponds to the internal dimension of the non-discrimination principle, central in the international trading regime, while its external one consists of the most-favoured-nation (MFN) treatment, whereby any advantage a country gives to another must be extended to all other countries.
 - 2 Cultural policy measures are of two main types: financial, such as subsidies; and regulatory, such as the ownership and/or management of cultural enterprises reserved to nationals, or local content quotas in broadcasting.
 - 3 On the trade and culture debate, see, among others, Voon (2007); Shi (2013); Lee (2023).

tion within the United Nations Educational, Scientific and Cultural Organization (UNESCO) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereafter the CDCE) (UNESCO, 2005). The Convention recognizes the dual – economic and cultural – nature of cultural products that, as vehicles of identities, values and meanings, must not be treated as solely having commercial value. It also reaffirms the sovereign rights of states to use a whole array of measures, financial and regulatory, in the pursuit of cultural policies, to foster cultural diversity in their territory and internationally⁴.

Many states are disinclined to open their cultural sector and favourable to some form of cultural exception. The audiovisual sector is the one in which the fewest members of the World Trade Organization (WTO) have commitments, these most often subject to limitations. Cultural products also represent one of the few sectors regularly subject to special treatment in PTAs (Chase, 2015).

This article considers the PTAs negotiated by Central American states and belongs to a larger study on the treatment of cultural products in such agreements. It summarizes the provisions on cultural services in Central American countries' PTAs and discusses the scope of these provisions, in light of the cultural policy measures involved and states' ability to pursue cultural policies. The countries considered are those belonging to the Central American Common Market (CACM), i.e., Costa Rica, El Salvador, Guatemala,

4 The Convention was adopted with 148 states in favour, two opposed (the United States and Israel), and four abstentions (Australia, Honduras, Liberia, Nicaragua). As of August 2023, the Convention had 151 states parties. On the Convention, see Vlassis (2015). On the link between the Convention and trade agreements, see also Graber (2006).

Honduras, Nicaragua, and Panama⁵. These six countries are also the founding members of the Central American Integration System. Central America is worth considering in regard to the trade and culture debate. Since the turn of the century, these countries, whether as a group or on their own, have been quite active on the trade liberalization front, with PTAs covering both goods and services. With El Salvador and Nicaragua, the region includes two of the only 13 countries that undertook commitments in audiovisual services during the Uruguay Round of multilateral trade negotiations⁶. Besides, with Honduras and Nicaragua, the region includes two of only four countries that abstained during the vote on the adoption of the CDCE⁷. Alongside other countries of the Americas, Central American states favour the negative-list approach for trade negotiations on services, despite its implications for the conduct of cultural policies. It will also be seen that Central American states vary widely as regards the number and scope of their commitments and/or exceptions relating to culture within the PTAs to which they are parties.

5 On the cultural policies of Central American countries, see Mejía (2021). See also the periodic reports submitted by Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama as parties to the Cultural Diversity Convention (UNESCO, Diversity of Cultural Expressions).

6 WTO (1994a). Panama also has multilateral audiovisual commitments, but these followed its accession negotiations to the WTO. For new countries to join the WTO, not only should members consent, but the terms of accession must be agreed between the applicant and WTO members. Each WTO member state may submit specific demands to the applicant country, both with regard to tariff and non-tariff issues, even beyond existing WTO disciplines. In Panama's case, there were no audiovisual entries in its initial services commitments offer in February 1995, but, in April 1996, its services offer included such commitments, which were later part of its Accession Protocol. Between 1996 and 2013, 16 of 25 new WTO members made audiovisual services commitments, mainly as a result of US pressure (see Gagné, 2016, p. 25). In 2023, 40 WTO members had audiovisual commitments.

7 Nonetheless, all six Central American countries have become parties to the Convention.

The article argues that such significant variations are primarily attributable to the importance each Central American country attaches to the protection of its cultural sector. In a second section, key considerations on trade negotiations and cultural services are emphasized, as well as the principal provisions and exceptions pertaining to cultural products within the texts of Central American PTAs. The six subsequent sections deal with the cultural reservations or commitments figuring in the annexes of the PTAs to which each of the Central American states belongs. A conclusion follows.

2.- TRADE NEGOTIATIONS AND CULTURAL SERVICES

As of December 2022, the number of effective Central American PTAs covering goods and services amounted to 25⁸. Among these, nearly 45%, i.e., 11, have involved the whole or some of the Central American countries, while a little more than 55%, or 14 of the PTAs, are bilateral and concluded between a Central American state and another, non-Central American, country. Sixty per cent or 15 of the Central American PTAs have been concluded with other countries of the Americas, while the others are with either Asian or European countries.

By chronological order, these PTAs have been concluded between Central America and the Dominican Republic (CA-DR)⁹, Central America and Chile (CA-Chile)¹⁰, Cen-

8 This excludes the Nicaragua-Taiwan Free Trade Agreement of 2006, repealed in July 2022.

9 Yet, the services annexes are nowhere to be found, so only the core text of this agreement is considered.

10 The services annexes are part of bilateral protocols concluded between Chile and each of the Central American countries except Panama.

tral America and Panama (CA-PN)¹¹, Panama and Taiwan (PN-Taiwan), Central America and the United States (US) (CAFTA), Guatemala and Taiwan (GU-Taiwan), Panama and Singapore (PN-Singapore), Panama and Chile (PN-Chile), El Salvador - Honduras and Taiwan (ES/HD-Taiwan), Panama and the US (PN-US), the Northern Triangle and Colombia (NT-Colombia), Costa Rica and Singapore (CR-Singapore), Costa Rica and China (CR-China), Panama and Canada (PN-Canada), Panama and Peru (PN-Peru), Costa Rica and Peru (CR-Peru), Central America and Mexico (CA-Mexico)¹², Central America and the European Union (EU) (CA-EU)¹³, Costa Rica and Colombia (CR-Colombia), Central America and the European Free Trade Association (EFTA) (CA-EFTA)¹⁴, Honduras and Canada (HD-Canada), Panama and Mexico (PN-Mexico), Honduras and Peru (HD-Peru), Central America and Korea (CA-Korea)¹⁵, Central America and the United Kingdom (CA-UK)¹⁶.

11 The services annexes are part of bilateral protocols concluded between Panama and the other five Central American countries. In the agreement through which Panama acceded to the CACM in 2013, services exceptions were to follow, but are nowhere to be found. Rather, the bilateral protocols under the CA-PN continue to apply.

12 This agreement led to the termination of three previous PTAs: the Costa-Rica – Mexico Free Trade Agreement of 1994; the Mexico – Nicaragua Free Trade Agreement of 1997; and the Mexico – El Salvador, Guatemala and Honduras (Northern Triangle) Free Trade Agreement of 2000.

13 The 27 EU members are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

14 Only Costa Rica and Panama belong to this agreement, although Guatemala signed an accession protocol in 2015. The EFTA members are: Iceland, Liechtenstein, Norway, and Switzerland.

15 Guatemala is not party to this PTA.

16 This PTA essentially repeats the provisions of the CA-EU following the UK's withdrawal from the EU.

The concerns over the treatment of cultural products in trade agreements essentially revolve around services. Most cultural products, notably audiovisual ones, come under the form of services¹⁷. These are also associated with key cultural policy measures, such as domestic content regulations in the media. Cultural goods are rarely subject to special treatment in trade agreements¹⁸. Beyond goods and services, another area with relevance to the cultural sector is investment. In the case of services and investment, states' specific commitments and/or exceptions within these fields are listed in the annexes to trade agreements. The United Nations Provisional Central Product Classification (UN CPC) code is widely used to identify the various sectors and sub-sectors, here of cultural services, for which states want to commit themselves, or to secure reservations, in trade agreements (United Nations, 1991).

Trade negotiations on services take place following two approaches or a combination of the two. These are known as the bottom-up or positive-list and the top-down or negative-list approaches. The use of either approach usually corresponds to states' preferences, but remains subject to agreement among parties to a trade deal. Positive lists often

17 Services can be traded under four modes of supply: mode 1 – cross-border, when a service is supplied from the territory of a country into the territory of another; mode 2 – consumption abroad, when a service is supplied in the territory of a country to the consumers of another; mode 3 – commercial presence, when a service is supplied through the establishment of a legal entity of a country in the territory of another (i.e., foreign direct investment); mode 4 – movement of natural persons, when a service is supplied by a national of a country in the territory of another. Between 80 and 90% of all services are traded under two modes of supply: cross-border (mode 1) and commercial presence (mode 3), which are also the dominant modes of providing audiovisual services. See Chase (2015, p. 228). Related to immigration policies, mode 4 is either subject to no commitments or 'horizontal' ones, while mode 2 hardly impacts cultural policies. Thus, the analysis of states' cultural commitments is to be limited to modes 1 and 3.

18 In their respective PTAs, the EU only excludes audiovisual services, and, although Canada exempts cultural industries, tariffs are abolished on cultural goods.

reflect states' caution to liberalize services, while negative lists usually result in larger liberalization. Indeed, under the latter, the sectors and measures not specifically exempted are liberalized by default¹⁹; whereas, under the former, only the sectors and measures specifically listed are subject to liberalization commitments²⁰. As is the case throughout the Western Hemisphere, Central American states usually resort to the negative-list approach. In the few cases where the positive-list approach was used, this followed the preferences of their trading partners, i.e., the EU, EFTA, and China.

In terms of percentage of CACM countries' external trade²¹, services account in 2022 for 15%, in Nicaragua's case, to up to 32% for Costa Rica. In all cases, except Nicaragua, services contribute favourably to the trade balance of these countries, i.e., when in deficit, the one for services is proportionately less than the one for goods, and, when in surplus,

19 Thus, only the sectors and measures in the exception lists or annexes are excluded. Exceptions in Annexes I allow states to maintain and renew measures in a given area. Yet, following the 'standstill' clause, any renewed or revised measure could not be more trade restrictive than the existing one; while, under the 'ratchet' clause, any subsequent liberalizing measure is to be automatically bound. Note that such clauses are also associated with positive-list negotiation modalities. Exceptions in Annexes II, also known as reservations for future measures, leave states with full discretion to not only maintain existing, but adopt new or more restrictive, measures in a sector or sub-sector. Negative listing also implies that, unless future services are exempted, all new ones are to be automatically bound.

20 These involve MA and NT. Then, states may set exceptions or conditions attached to their commitments. Thus, a sector or sub-sector included in a country's list of specific commitments does not automatically entail full compliance with such obligations. States rather decide, for each mode of supply, whether to undertake full commitments (i.e., without any limitations), partial commitments (i.e., inscribing in their schedules measures or types of measures inconsistent with MA or NT obligations to be maintained or adopted in the future), or no commitment at all (i.e., keeping flexibility to maintain or adopt any measure inconsistent with MA or NT obligations with regard to a given mode of supply). The positive lists are generally intended to be expanded through the successive addition of sectors and the further elimination of restrictions. Yet, this remains a difficult and, thus, not so frequent exercise.

21 Exports and imports of goods and services.

services contribute proportionately more to the favourable trade balance. In the case of El Salvador, the services sector has a surplus, while the overall external trade is in deficit. For Nicaragua, the deficit for services accounts for a little more than 19% of the overall trade deficit (World Bank). Such figures might help explain why CACM countries resort to the negative-list approach, although the latter is used by all Latin American states.

Beyond services and investment, the chapters and/or provisions on electronic commerce or digital trade, intellectual property, government procurement, telecommunications, subsidies, domestic regulations, movement of natural persons, and general exceptions, depending on their content, may also be of some relevance. Such provisions figure in the framework or core text of trade agreements. In the case of the PTAs considered in this article, the services and investment chapters or their key obligations do not apply to subsidies or grants bestowed by a party, including government-supported loans, guarantees, and insurance²². States parties, thus, retain great latitude to use financial measures for cultural policy purposes. Interestingly, under the CA-DR, the investment chapter does not apply to measures adopted for reasons of protection of cultural and environmental heritage (Art 9.02(2b)); while, under the PN-Singapore, the services chapter includes an article providing for the imposition, under specified modalities, of conditions on the supply of new services (Art 10.8). As in all of the EU PTAs, the audiovisual sector is excluded from the services and investment chapters under the CA-EU

22 Such an exception could not be identified in the CA-EFTA and in the investment chapters of the CA-DR, CA-Chile, PN-Chile, and CR-China. For the last three PTAs, bilateral investment treaties (BITs) already concluded between the parties continue to apply. Referring to every chapter, article or page number of specific provisions, commitments and/or reservations of the various PTAs analyzed in this article would be both lengthy and cumbersome. Yet, all PTAs are referenced, with web links, from which their contents can be accessed and verified.

and CA-UK. Reflecting Canada's practice, under the general exceptions chapters, cultural industries are excluded under the PN-Canada and HD-Canada.

Nearly half of the PTAs considered in this article, i.e., 12, have a chapter on electronic commerce. Beyond cooperation in this field, seven of them, i.e., CAFTA, PN-Singapore, PN-US, NT-Colombia, CR-Singapore, CA-Mexico, CA-Korea, explicitly provide for the non-discriminatory treatment of digital products among parties, except for the exceptions under the investment and services chapters listed in the annexes to these PTAs²³. Under the CR-Singapore, the non-discrimination obligation does not apply to broadcasting (Art 12.4(6))²⁴. Nearly three-quarters of the Central American PTAs, i.e., 18, comprise a chapter dealing with intellectual property. They refer to the rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and other multilateral intellectual property agreements, although the CA-DR, the CA-PN and GU-Taiwan only refer to the former. The PTAs with the United States (CAFTA, PN-US), the EU (CA-EU, CA-UK) and the CA-Korea provide for an extension of copyrights to 70 years.

Let us now turn to the exceptions and commitments taken by Central American countries relating to cultural services and contained in the annexes to their PTAs, distinguishing in each case between negative-list and positive-list ones.

23 Rather than the non-discrimination provision, the PN-Canada provides for the whole chapter not to apply to such non-conforming measures (art 15.02(3)).

24 Broadcasting is understood as the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

3.- COSTA RICA

The 12 PTAs to which Costa Rica belongs include eight concluded between Central America and Chile (CA-Chile), the US (CAFTA), Panama (CA-Panama), Mexico (CA-Mexico), the EU (CA-EU), EFTA (CA-EFTA), Korea (CA-Korea), and the UK (CA-UK), as well as four Costa Rica concluded bilaterally with Singapore (CR-Singapore), China (CR-China), Peru (CR-Peru), and Colombia (CR-Colombia). The CR-China, CA-EU, CA-EFTA, and CA-UK have been negotiated under positive-list modalities.

3.1.- Costa Rica's Negative-List PTAs

Except for the CR-Singapore, radio, television and cinema²⁵ programs are governed by the following rules: 1) if commercials consist of jingles recorded abroad, a certain sum must be paid each time they are transmitted²⁶; 2) only 30% of the filmed commercials projected in each television station or movie theatre each day may be of foreign origin; 3) the import of commercials outside the Central American area must pay a tax of 100% of their value²⁷; 4) the number of radio programs and soap operas recorded abroad may not exceed 50% of those broadcasted by each radio station

25 There is no mention of 'film' or 'cinema' in the CAFTA and CA-PN, although the rules are the same.

26 For the second part of the sentence, the CAFTA rather mentions 'a lump sum must be paid every time the commercial is aired on domestically transmitted television'. This entry does not figure in the CA-Chile.

27 The CAFTA and CA-PN specify the import 'in a physical medium' of commercials 'aired on domestically transmitted television'. Interestingly, the former specification suggests that commercials in a digital format are not subject to the tax. Radio, film or television commercials made in any of the other Central American countries with which there is reciprocity in this matter are considered national.

daily; 5) the number of programs filmed or videotaped abroad may not exceed 60% of the total televised programs daily²⁸.

Under the early Costa Rican PTAs, i.e., the CA-Chile and CAFTA, only a Costa Rican national or enterprise with at least 65% of its capital owned by Costa Ricans may 1) obtain a license for or be awarded a free over-the-air broadcast television channel²⁹; 2) obtain a license to operate radio, ham radio, and radio-television stations³⁰; and 3) establish or manage an enterprise supplying wireless services³¹. The latter restriction is the only one figuring under the CA-PN. Under the CAFTA, only a Costa Rican national or enterprise with nominal capital stock and owned by Costa Rican nationals may obtain a license for ultra-high frequency radio broadcasting³².

Under CAFTA, CR-Peru, CA-Mexico, CR-Colombia, and CA-Korea, wireless services may not be permanently removed from state ownership and may be supplied only by the public administration or private parties, according with the law or under a special concession granted for a limited period of time and based on conditions and stipulations to be established by the Legislative Assembly. Under CAFTA, directors and administrators of enterprises supplying radio

28 The CAFTA and CA-PN rather provide that the number of such programs 'may be limited to' 60% of the total televised programs daily.

29 The CAFTA specifies 'for signals that originate in Costa Rica'.

30 The CAFTA also mentions 'private broadcasting stations'.

31 The restriction does not apply to the setting up and operation of ham radio stations, although rights shall not be granted to a foreign national residing in Costa Rica when his/her country of origin does not grant that same right to Costa Rican nationals. Under the CA-Chile, only a Costa Rican may obtain a ham radio license.

32 The CA-Chile rather mentions Costa Rican nationals or foreigners with work or residence permits and further specifies that the state shall exercise surveillance and control of all wireless service installations.

and television services must be Costa Ricans by birth or have been naturalized citizens for at least ten years. The right to establish radio stations in Costa Rica for transmission or reception of official messages is permanently reserved to the state and is not subject to concession.

The CR-Peru, CA-Mexico, CR-Colombia, and CA-Korea further provide for concessions, authorizations and permits to be required to supply in Costa Rica telecommunications services, in the case of the first three, and radio and television transmission services by subscription, in the latter's case. Economic needs tests are required to grant such concessions, authorizations and permits. Under the CA-Korea, such services must be supplied through a commercial presence and residency requirements apply. For integrated terrestrial television systems by subscription, concessionaires must include in their programming the Costa Rican television channels that cover at least 60% of the national territory, meet a minimum of 14 hours of daily transmission, and whose signal reception meets the minimum requirements set out in the relevant regulation, have acceptable rates of audience and the corresponding transmission rights. The television services by subscription are to broadcast integrally, without modifications, including advertising of, the transmitted national channels.

Under CAFTA, mass media and advertising services may only be provided by enterprises incorporated in Costa Rica with nominative stock or established as *sociedades personales* under Costa Rican law. Under the CA-Panama, CR-Peru, CA-Mexico, CR-Colombia, and CA-Korea, mass media and advertising agencies may only be exploited by natural or legal persons in the form of sole proprietorship/personal companies (*sociedades personales*) or enterprises of capital with nominative stocks. Such companies must figure

in the Public Registry. It is absolutely forbidden to encumber the shares and quotas of a company owning any media or advertising agency in favour of anonymous corporations (*sociedades anónimas*) with bearer shares or of natural or juridical foreign persons. The spots, advertisements, or filmed commercials used in programs sponsored by the state's autonomous or semi-autonomous institutions, the government of the Republic and all the entities receiving a subsidy from the state must be of national production³³. Announcers of commercials for films, radio and television must register with the relevant public authority and foreign announcers must be residents to register. The diffusion of commercials is not authorized without such registration.

Under the CA-Chile and CAFTA, radio, film and television commercials are considered national when at least 90% of the jingle has been composed or arranged by Costa Ricans, at least 90% of the image has been drawn, photographed, printed, filmed or videotaped by Costa Ricans, and at least 90% of the technical personnel involved in the overall production are Costa Ricans. Commercials from the Central American region meeting these requirements and with proper documentation are considered national³⁴. Under the CA-PN, a threshold of at least 75% applies for jingles and technical personnel, in favour of Costa Ricans or foreigners residing

33 Under the CA-Chile, the autonomous or semi-autonomous institutions of the state, the government of the Republic and all the entities that receive a subsidy from the state must dedicate their advertising and information budgets on television and radio to the sponsorship of artistic, cultural or informative national productions, without exceeding 70% of said advertising budget for television or radio, while the spots, ads or filmed commercials in the programs sponsored by such entities must also be of national production. Is to be considered a film or television producer a company employing at least 90% of national workers, whose legal representative is Costa Rican, and which has trained technical and intellectual personnel and the necessary equipment for the realization of the usual products of the genre.

34 This last specification does not figure in CAFTA.

in the country, with no condition for images, but one for at least 75% of the overall production to be carried out in the national territory. Commercials from the Central American region are considered national when complying with the above requirements, with proper documentation, and when there is reciprocity in the matter. Under the CR-Peru, CA-Mexico, CR-Colombia, and CA-Korea, commercial advertisements produced and edited in Costa Rica, with those from the Central American area with whom there is reciprocity in the matter, are considered national.

Under the CA-Chile, every show must enter the country promoted by a national company, which is responsible for and guarantor of the foreign company before, during, and after the activity. Under the CR-Peru, CA-Mexico, CR-Colombia, and CA-Korea, a person who hires or employs foreign artists must hire the same number of national artists for the same show, unless the respective majority union indicates that there are not enough Costa Rican artists to be hired.

Except as authorized, a journalist who is a foreign national may cover events in Costa Rica only if he/she is a resident of Costa Rica. The Board of Directors of the *Colegio de Periodistas* may grant non-resident foreign nationals a special permit to cover events in Costa Rica for up to one year and may extend that period, provided that doing so does not harm or conflict with the interests of members of the Colegio. If the latter decides that an event of international importance will occur or has occurred in Costa Rica, it may grant a non-resident foreign national with appropriate professional credentials a temporary permit to cover the event for the foreign media the journalist represents. Such permit may be

valid for up to one month after the event³⁵. To join the Professional Associations of Journalists, all foreign professionals must prove that, in their home jurisdiction where they could practice, Costa Rican nationals can exercise their profession under like circumstances³⁶. The CR-Peru and CA-Korea further provide that, when applying to join, foreign professionals must have been Costa Rican residents for a minimal number of years, usually two to five.

Under Annex II, Costa Rica has reserved its right to adopt or maintain any measure with respect to: the exploitation, administration, and provision of wireless, telecommunications, radio and television services (CA-Chile); electronic means and cultural industries (CA-PN); telecommunications, audiovisual (including broadcasting), and advertising services (CR-Singapore); radio and television (broadcasting³⁷) (CR-Peru, CA-Mexico, CR-Colombia); radio and television, as well as motion picture promotion, advertising, and post-production services (CA-Korea). Under CAFTA, CR-Singapore, CR-Peru, CA-Mexico, CR-Colombia, and CA-Korea, there is also an MFN exemption in favour of cultural industries³⁸,

35 Among Costa Rica's negative-list PTAs, only the CA-PN does not include these stipulations.

36 The CA-Mexico and CR-Colombia also mention librarians.

37 Broadcasting is defined as 'the uninterrupted chain of transmission required for the distribution of television and radio signals to the general public, but does not cover contribution links between operators'.

38 These are defined as in the United States-Mexico-Canada Agreement, formerly the North American Free Trade Agreement, as 'persons engaged in any of the following activities: a) publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing; b) production, distribution, sale, or display of recordings of movies or videos; c) production, distribution, sale, or display of music recordings in audio or video format; d) production, distribution, or sale of printed music scores or scores readable by machines; or e) radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks'.

such as audiovisual cooperation agreements; and, under the CR-Singapore, relating to telecommunications and electronic commerce.

*Table 1: Costa Rica's Main Regulatory Exceptions
in Cultural Services*

	CA-CL	CAF-TA	CA-PN	CR-SG	CR-PR	CA-MX	CR-CO	CA-KR
Property/management/licensing of broadcasting and advertising firms	x	x	x		x	x	x	x
Domestic content								
- Public radio	x	x	x		x	x	x	x
- Public TV	x	x	x		x	x	x	x
- Subscription TV								x
- Commercials	x	x	x		x	x	x	x
Journalism	x	x	x	x	x	x	x	x
Commercials	x	x	x		x	x	x	x
National artists					x	x	x	x
Audiovisual cooperation agreements		x		x	x	x	x	x
Audiovisual/Broadcasting	x			x	x	x	x	x
Advertising				x				
Electronic means / Cultural industries			x					

* CL – Chile; SG – Singapore; PR – Peru; MX – Mexico; CO – Colombia; KR – Korea

Source: Information drawn from services reservations under Costa Rica's negative-list PTAs.

As summarized in Table 1, Costa Rica has secured a rather broad array of exceptions in favour of the cultural sector, notably with domestic content requirements in public radio and television, as well as commercials; broadcasting and advertising enterprises reserved to national citizens or juridical persons; and audiovisual cooperation agreements. This applies to the CAFTA, which otherwise does not include any of the broad Annex II reservations found in the other Costa Rican PTAs. Such an exception for audiovisual and advertising services under the CR-SG may well explain the absence of most of Costa Rica's Annex I reservations in that agreement. The CA-PN even comprises a broad reservation relating to electronic means and cultural industries. Yet, to the extent that such reservations do not figure in CAFTA, their resort may run afoul of Costa Rica's trade obligations. States' PTA provisions, here toward cultural services, tend to apply indiscriminately, as it is rather impracticable to have different regulations in place for various trading partners. Hence, the most liberalizing of a country's PTA ends up setting the stage for what it could do to regulate its cultural sector.

3.2.- Costa Rica's Positive-List PTAs

Under the CR-China, Costa Rica has commitments in advertising (CPC 871), in the latter sector as well as printing and publishing (88442) under the CA-EFTA; while, under the CA-EU and CA-UK, also figure entertainment (only privately funded services) (9619), news and press agencies (962). While printing and publishing is subject to no limitations, advertising is unbound under mode 1, and, under mode 3, subject to the following limitations. Incorporation and specific types of legal entity are required. For the encumbrance of shares or quotas, anonymous societies and foreign natural or juridical persons shall be subject to limitations. Broadcasting in radio,

television and cinema of foreign commercials and jingles shall be subject to limitations, while broadcasters shall be subject to nationality, residency and registration requirements. Preferential treatment shall be granted to commercials from Central American countries. Commercial breaks, spots and commercials sponsored by the state, any other state institution or other entities supported by the state shall be subject to nationality requirements³⁹. As for entertainment, as well as news and press agency services, they are unbound under mode 1, with no limitations under mode 3 in the former's case, while the latter is subject to conditions. These repeat the exceptions mentioned within negative-list PTAs in regard to the covering of events by journalists.

Table 2: Costa Rica's Main Commitments in Cultural Services

	CR-China	CA-EU	CA-EFTA	CA-UK
Advertising	x	x	x	x
Printing/Publishing		x	x	x
Entertainment		x		x
News and press agencies		x		x

Source: Information drawn from services commitments under Costa Rica's positive-list PTAs.

In cultural services, Costa Rica's commitments are rather modest, with these relating to four sectors, and to only two sectors in the CA-EFTA and one sector in the CR-China, as indicated in Table 2. Of these, only printing and publishing is not subject to limitations. The other three sectors are subject to

³⁹ Under the CA-EFTA, the limitations are formulated in more detail, close to the formulation of the corresponding exceptions under Costa Rica's negative-list PTAs.

no commitments under mode 1 and, except for entertainment, to limitations under mode 3.

4.- EL SALVADOR

The PTAs to which El Salvador is a party comprise those concluded with Central America: CA-Chile, CA-PN, CAFTA, CA-Mexico, CA-EU, CA-Korea, CA-UK, alongside those between El Salvador, Honduras and Taiwan (ES/HD-Taiwan), as well as the Northern Triangle and Colombia (NT-Colombia). Among these, only the CA-EU and CA-UK are with positive lists.

4.1.- El Salvador's Negative-List PTAs

Concessions and licenses for free reception broadcasting services should only be granted to Salvadoran nationals born in the country or enterprises organized under Salvadoran law whose equity capital is at least 51% owned by Salvadorans. Under the CA-PN, it is further provided that broadcasting stations must be managed by responsible operators, Salvadorans by birth, duly authorized. Only a Salvadoran citizen could be an announcer for a radio station.

At least 90% of the production and recording of any commercial advertisement for use in El Salvador's public communications media must be carried out either by Salvadorans, under the CA-Chile, CA-PN and ES/HD-Taiwan, or by enterprises organized under Salvadoran law, as provided in the CAFTA, NT-Colombia, CA-Mexico, and CA-Korea⁴⁰. In case of reciprocity in this matter, a commercial advertisement produced or recorded by Central American nationals or enterprises may be

40 The latter PTAs also include a description of public communications media as over-the-air television and radio broadcasts as well as printed material originating in El Salvador. Under the CA-Mexico, it is further specified that 90% of such ads must be produced and recorded by national elements.

used in the Salvadoran media. Commercial advertisements not fulfilling the above requirements can be circulated in El Salvador's public media when they relate to international products, brands, or services imported into or produced in the country under license, subject to a fee.

No foreign artist may give paid performances of any kind without the prior express authorization of the *Ministerio de Gobernación*, which must first seek, within 15 days, the advisory opinion of the legally established craft union of the artistic field in which the artist⁴¹ is involved. Foreign artists should pay, to the relevant union, a performance fee deposit of 10% of the gross income to be earned in the country or, if not possible, an adequate amount as a security deposit. No foreign artist or group of artists may perform in El Salvador for more than 30 days consecutively or intermittently within a year from the date of the first performance. Foreign circuses or other similar shows should pay to the relevant circus union a performance fee equal to 2.5% of the gross income to be earned daily from ticket sales. The fee shall be paid in full through the withholding system. All foreign circuses must be authorized by the appropriate Ministry and, once authorized, notify the *Asociación Salvadoreña de Empresarios Circenses (ASEC)* and pay the latter 3% of the gross income earned from ticket sales for each performance, as well as 10% of total earnings from sales to the audience, inside the circus, of flags, caps, tee shirts, balloons, photographs, and other paraphernalia. The foreign circus must pay an adequate amount as a security deposit to ASEC. A foreign circus entering El Salvador may only work in the city of San Salvador for 15 days, which may be extended only once for a further 15 days. A

41 An artist is any person acting in El Salvador, individually or in a company consisting of one or more persons, to give performances in music, song, dance or readings, or to present shows, whether in person (i.e., live) or before a large or small audience or on radio or television.

foreign circus having performed in the country can only return to El Salvador after at least one year from the date it left the country. Lastly, in the case of public performances involving the live participation of artists of any kind, the participation of Salvadoran nationals should be equivalent to 20% of the number of participating foreigners.

Under Annex II, in the CA-Chile, El Salvador keeps latitude with respect to the cross-border provision of audiovisual services, as described the industrial classification element; while, in the CA-PN, the exception also refers to investment in such services. Under the CA-Korea, El Salvador reserves the right to adopt or maintain any measure: in audiovisual services, such as motion picture and video tape production and distribution, motion picture projection, and sound recording; as well as in creative industry, i.e., the production of creative content, such as music, theatre, literature, photography, animation, video and computer games (including online), and software development.

Table 3: El Salvador's Main Regulatory Exceptions in Cultural Services

	CA-Chile	CA-PN	CAF-TA	ES/HD-TW	NT-CO	CA-MX	CA-Korea
Management/licensing of public broadcasting firms	x	x	x	x	x	x	x
Commercials	x	x	x	x	x	x	x
Foreign artists	x	x	x	x	x	x	x
Foreign circuses or other similar shows	x	x	x	x	x	x	x
Audiovisual	x	x					x
Creative industry							x

TW – Taiwan; CO – Colombia; MX - Mexico

Source: Information drawn from services reservations under El Salvador's negative-list PTAs.

On the whole, El Salvador's exceptions for culture are fairly modest, as synthesized in Table 3. Beyond reserving free reception broadcasting services to Salvadoran nationals and enterprises, the other exceptions, although figuring in all Salvadoran PTAs, only relate to commercial advertisements, foreign artists and circuses. Broader Annex II reservations, as for audiovisual and creative industry, are only to be found under the CA-Chile, CA-PN, and CA-Korea.

4.2.- El Salvador's Positive-List PTAs

Under the CA-EU and CA-UK, El Salvador has commitments in advertising; printing and publishing; entertainment; news and press agencies; libraries, archives, museums (CPC 963). For advertising, under mode 1, a minimum of Salvadoran content is required in the production and recording of any commercial advertisement for use in the country's public communications media. In the case of entertainment, for modes 1 and 3, foreign artists who give paid performances must seek authorization of the *Ministerio de Gobernación*, and pay fees in advance, or an adequate amount as a security deposit, to the relevant union(s), when applicable. Foreign circuses or other similar shows should pay to the relevant circus union a performance fee and be authorized by the appropriate Ministry. Foreign circuses should also pay an additional fee based on the gross income earned from ticket sales for each performance, as well as the total earnings from sales to the audience of flags, caps, tee shirts, balloons, photographs, and other paraphernalia. The foreign circus is required to pay an adequate amount as a security deposit. There are limitations on the number of performances of foreign artists and circuses in El Salvador. Finally, there is a minimum requirement of Salvadoran participation vis-à-vis foreigners in the case of public performances involving the live participation of artists.

Unsurprisingly, such limitations echo some of the exceptions already seen under the Salvadoran negative-list PTAs.

Salvadoran PTA cultural commitments are limited, even if more ambitious than Costa Rica's, as summarized in Table 7. El Salvador has committed itself in five sectors, while only two, i.e., advertising and entertainment, are subject to limitations⁴².

5.- GUATEMALA

Together with its bilateral PTA with Taiwan (GU-Taiwan), Guatemala belongs to the CA-Chile, CAFTA, NT-Colombia, CA-PN, CA-Mexico, CA-EU, and CA-UK, the latter two with positive lists.

5.1.- Guatemala's Negative-List PTAs

Prior authorization from the *Dirección de Espectáculos* is required to contract with foreign groups, enterprises, or artists. To perform in Guatemala, foreign artists or artist groups must have a consent letter from any of the relevant legally recognized non-governmental artist unions in the country. In mixed performances, made up of one or more films and variety shows, preference is to be given to Guatemalans if the circumstances of the cast, schedule, and contract so permit. Under the more recent CA-Mexico, prior authorization to contract with foreigners is not mentioned, while the exception rather stipulates that a consent letter is required for each performance by foreign artists in Guatemala.

42 These commitments are also larger than those El Salvador made under the General Agreement on Trade in Services (GATS), essentially relating to advertising, as well as radio and television transmission (CPC 7524) (WTO, 1994b).

Table 4: Guatemala's Main Regulatory Exceptions in Cultural Services

	CA-Chile	CAF-TA	GU-Taiwan	NT-CO	CA-PN	CA-Mexico
Foreign artists/groups	x	x	x	x	x	x

CO – Colombia

Source: Information drawn from services reservations under Guatemala's negative-list PTAs.

Guatemala's cultural exceptions are strikingly modest, as revealed in Table 4, only pertaining to entertainment.

5.2.- Guatemala's Positive-List PTAs

Guatemala has taken commitments under the CA-EU and CA-UK in the same five sectors as El Salvador. For entertainment, under mode 1, prior authorization from the *Dirección de Espectáculos* is required to contract with foreign groups, enterprises, or artists.

As indicated in Table 7, if, like El Salvador, Guatemala has committed itself in five sectors, in its case, only entertainment is subject to limitations. Overall, these commitments relating to the cultural sector remain limited.

6.- HONDURAS

Honduras is party to the CA-Chile, CAFTA, ES/HD-Taiwan, CA-PN, NT-Colombia, CA-Mexico, CA-EU, CA-Korea, and CA-UK; alongside two bilateral agreements, with Canada (HD-Canada) and Peru (HD-Peru). Here again, the CA-EU and CA-UK are with positive lists.

6.1.- Honduras' Negative-List PTAs

Only Honduran nationals by birth may hold senior management positions in newspapers or free over-the-air broadcast (radio and television) media, including the intellectual, political, and administrative orientation. The CA-Chile, however, only mentions that to exercise the functions of director, deputy director and editor-in-chief of newspapers, it is required to be Honduran. Foreign music artists who wish to perform individually or as a group in Honduras must register for each performance with, and pay 5% of the contracted fee to, the Artist Union of Honduras, while the manager or leaser shall, if possible, contract local artists to perform during the same performance. In the CA-Korea, Honduras has taken an Annex II reservation in the audiovisual sector related to animations, video games, motion pictures, and video tapes.

Table 5: Honduras' Main Regulatory Exceptions in Cultural Services

	CA-CL	CAF-TA	ES/HD-TW	CA-PN	NT-CO	CA-MX	HD-CN	HD-PR	CA-KR
Management of social com. media	x	x	x	x	x	x	x	x	x
Foreign music artists	x	x	x	x	x	x	x	x	x
Audiovisual									x

CL – Chile; TW – Taiwan; CO – Colombia; MX – Mexico; CN – Canada; PR – Peru; KR - Korea

Source: Information drawn from services reservations under Honduras' negative-list PTAs.

As summed up in Table 5, the exceptions Honduras secured in favour of culture are remarkably modest, relating to foreign artists, yet larger than Guatemala's, with nationality requirements for the senior management of audiovisual and printed media. One PTA, the CA-Korea, includes an Annex II reservation within the audiovisual sector.

6.2.- Honduras' Positive-List PTAs

Under the CA-EU and CA-UK, Honduras has full commitments in advertising; printing and publishing; libraries, archives, museums⁴³; and limited ones in entertainment, as well as news and press agencies. In the latter two sectors, mode 1 is unbound. Mode 3 has no limitations in the case of entertainment, while for news and press agencies, only Honduran nationals may exercise senior management of newspapers or free over-the-air broadcast (radio and television) news media, including the intellectual, political, and administrative orientation.

In the Central American PTAs with the EU and UK, as for El Salvador and Guatemala, Honduras has committed itself in the same cultural sectors, as synthesized in Table 7, while its commitments are subject to limitations in two of these: entertainment, news and press agencies. With these two sectors unbound for mode 1, Honduras' commitments are less liberalizing than El Salvador's.

7.- NICARAGUA

Aside from its bilateral PTA with Taiwan, which it recently repealed, Nicaragua belongs to the CA-Chile, CAFTA,

43 For advertising, there are some limitations under mode 1, but none pertaining to the cultural sector.

CA-PN, CA-Mexico, CA-EU, CA-Korea, and CA-UK. The agreements involving Europe, i.e., CA-EU and CA-UK, are the only ones concluded under positive-list modalities.

7.1.- Nicaragua's Negative-List PTAs

Licenses for operating free over-the-air television and radio broadcast services (known under Nicaraguan law as social communications media) may only be granted to Nicaraguan persons. In the case of enterprises, Nicaraguan nationals must own 51% of the capital. The CA-PN further provides that only natural or legal persons, incorporated in Nicaragua and domiciled in the country, may be granted, or make use of, licenses for radio and free over-the-air television services. Under the CA-Chile, CA-PN, and CA-Mexico, a license granted by the regulatory authority (TELCOR) is required to install, operate or exploit a public network of telecommunications for the provision of television services by subscription. Companies directly marketing radio and television satellite signals and providing carrier services satellites must secure signal landing agreements with, and licenses from, TELCOR.

Enterprises supplying radio and television broadcast services in Nicaragua shall only resort to announcers who are Nicaraguan nationals for narration, commentary, and live broadcast in sports or similar commercial programs. Regardless, foreign nationals could serve as announcers if the laws of their own countries allow Nicaraguan nationals to supply such services. The provisions of this measure shall not apply to the broadcast of programs by foreign announcers when the transmission of such programs is aimed exclusively at other countries.

Foreign artists or musical bands may perform in Nicaragua solely through a prior contract or government agreement. Foreign artists who perform shows or reviews of a commercial nature must include a Nicaraguan artist or group performing similar shows and who must be paid. Foreign artists or artistic groups not wishing to include a national artist in their program must pay 1% of the show's net receipts to the Nicaraguan Institute of Culture (NIC) unless the foreign artists or groups' country of origin does not impose such tax to Nicaraguan artists or artistic groups. Foreigners selected for the design and construction of public, pictorial, or sculptural monuments erected in Nicaragua should do so in association with Nicaraguan artists⁴⁴.

In the CA-Chile and CA-PN, the above paragraph begins by mentioning that to produce an international film in Nicaragua, any foreign natural or legal person must contribute 5% of the production's total value to the NIC, thereby to increase the National Film Promotion Fund (NFPP), as specified under the CA-PN. International film productions made in Nicaragua should comprise a minimum of 10% of technical, creative, and artistic Nicaraguan personnel, except for those co-produced with Nicaraguan filmmakers.

The CA-Mexico and CA-Korea rather provide that co-productions with Nicaraguan filmmakers must have at least 30% of artistic, technical, and creative national staff and the production a no less than 10% Nicaraguan economic participation. Foreign film productions should comprise at least 20% of technical, creative, and artistic Nicaraguan

44 In the CA-Mexico, one rather reads that the design and construction of such Nicaraguan monuments is to be awarded through competition to national artists and, when necessary, to foreigners associated with national artists. The CA-Korea includes the two entries.

personnel. In case producers do not want to include national personnel, they must pay in cash 5% of the production's budget in the country to the NFPP. Foreign productions temporarily entering the country for making films must pay a filming duty to the Fund. Any foreign natural or legal person performing any type of audiovisual or film production in any format must be registered at the National Cinematheque of Nicaragua. Once the production is finished, a copy of it must be deposited in the Cinematheque's Film Archive. Audiovisual advertising works carried out wholly or partially outside of Nicaragua must apply to the Cinematheque for the authorization of their exhibition in the national territory. A quota of 20% of national production applies in the case of such works exhibited or transmitted in cinemas, television, or cable television. The CA-Korea also specifies that, in the case of the co-production of cinematographic works carried out with national professionals or residents of the states belonging to the Latin American Cinematographic Coproduction Agreement, the directors of such productions must be either nationals or residents of the states parties to the Agreement or co-producers from Latin America, the Caribbean, other Spanish-speaking or Portuguese-speaking countries.

Under Annex II, Nicaragua has taken an exemption from MFN treatment concerning the one-way satellite transmission of direct-to-home and direct broadcasting satellite television services and digital audio services. In the CA-Chile, Nicaragua has taken a further MFN exemption with respect to cultural matters. In that same PTA, there is also a reservation toward measures related to advertising in programs broadcasted from outside the Nicaraguan territory.

Table 6: Nicaragua's Main Regulatory Exceptions in Cultural Services

	CA-Chile	CAF-TA	CA-PN	CA-Mexico	CA-Korea
Licensing of public broadcasting services	x	x	x	x	x
Foreign artists/groups	x	x	x	x	x
National announcers	x	x	x	x	x
International audiovisual/film (co)productions	x		x	x	x
Satellite TV and digital audio	x	x	x	x	x
Cultural matters	x				

Source: Information drawn from services reservations under Nicaragua's negative-list PTAs.

Overall, the Nicaraguan exceptions for culture are rather limited, as indicated in Table 6. The number and scope of Annex I reservations are closer to El Salvador's, notably as regards broadcasting services and foreign artists. Yet, among Central American countries, Nicaragua distinguishes itself with a series of conditions relating to financial contributions, percentage of national personnel or production, registration, in the case of international audiovisual/film productions and co-productions. The two Annex II exceptions consist of MFN exemptions and only one applies to all of the PTAs.

7.2.- Nicaragua's Positive-List PTAs

Nicaragua has commitments, with no limitations under modes 1 and 3, in advertising; printing and publishing; libraries, archives, museums. In entertainment, mode 1 is

unbound, while mode 3 has some limitations⁴⁵; whereas in news and press agencies, mode 1 is fully liberalized and mode 3 is unbound.

Table 7: El Salvador, Guatemala, Honduras and Nicaragua's Main Commitments in Cultural Services

	CA-EU	CA-UK
Advertising	x	x
Printing and publishing	x	x
Entertainment	x	x
News and press agencies	x	x
Libraries, archives, museums	x	x

Source: Information drawn from services commitments under El Salvador, Guatemala, Honduras and Nicaragua's positive-list PTAs.

As for its Northern Triangle partners in their PTAs with the EU, the Nicaraguan cultural commitments remain modest, as summarized in Table 7⁴⁶.

8.- PANAMA

Panama is party to 12 PTAs. Some have been concluded bilaterally by Panama with: Central America (CA-PN), in this case assorted with five bilateral protocols (with El Salvador (CA/ES-PN), Honduras (CA/HD-PN), Costa Rica (CA/CR-PN), Guatemala (CA/GU-PN), Nicaragua (CA/NI-PN)), Taiwan (PN-Taiwan), Singapore (PN-Singapore), Chile (PN-Chile), the United States (PN-US), Canada (PN-Cana-

⁴⁵ Unbound for ancillary theatrical services (not elsewhere classified) (CPC 96193) and ballroom, discotheque and dance instructor services (96195).

⁴⁶ These differ from Nicaragua's GATS commitments, which only pertain to the audiovisual sector, more precisely, motion picture and video tape production and distribution (CPC 9611) and motion picture projection (9612) (WTO, 1994c).

da), Peru (PN-Peru), Mexico (PN-Mexico)⁴⁷; while others have been negotiated under the aegis of the CACM, i.e., the CA-EU, CA-EFTA, CA-Korea, and CA-UK. Seven of these are strictly bilateral, while five have been concluded with a grouping, including the one between Panama and Central America. Three, i.e., the CA-EU, CA-EFTA, and CA-UK, are with positive lists.

8.1.- Panama's Negative-List PTAs

Concessions to operate public radio or television stations in Panama may be granted to natural persons, who must be Panamanian nationals, or to enterprises, with at least 65% of their shares owned by Panamanians⁴⁸. It is also stipulated in substance that each of the senior managers and directors of enterprises operating public radio or television stations must be Panamanian nationals. Under no circumstances may a foreign government or state enterprise supply, by itself or through a third party, public radio or television services or hold a controlling interest, directly or indirectly, in an enterprise supplying such services⁴⁹. A license is required for announcers to make advertisements within Panama to be broadcasted in public radio or television. Such licenses are reserved to Panamanians or nationals of other states where reciprocal rights are granted.

47 Note that Panama does not belong to the CA-Mexico, concluded before its accession to the CACM.

48 This does not apply to paid public radio and television and, thus, more than 50% of the capital of such concessions may be foreign owned.

49 In the CA-PN, the protocols with El Salvador, Guatemala, Honduras, and Nicaragua, as well as the PN-Taiwan, PN-Singapore, and PN-Chile further provide that all concessionaires of public telecommunications services and their subsidiaries are forbidden from operating public radio and television services while they are operating public telecommunication services under a temporary exclusivity regime.

All of Panama's PTAs, except the PN-US, provide for the following exceptions. An employer hiring a foreign orchestra or musical group is required to hire a Panamanian orchestra or musical group to perform at each one of the locations where the foreign orchestra or musical group performs. This applies for the duration of the foreign orchestra or musical group's contract. The Panamanian orchestra or musical group should receive at least USD 1,000 per performance and each member no less than USD 60 of this amount. A Panamanian artist performing alongside a foreign artist must be hired on the same terms and with the same professional considerations. This applies, but is not limited, to promotions, publicity, and advertising of the event, regardless of the media used⁵⁰. The hiring of a foreign artist for promotions, or the charitable donation or exchange of the services or works of a foreign artist, is only to be approved if it does not adversely affect or displace a national artist. In any case, such hiring must be submitted for evaluation by an expert to determine the value of the service and work provided for the payment of union fees and dues. Advertising announcements for television and cinematography produced in foreign countries may only be permitted if dubbed in Spanish by Panamanian nationals possessing an announcer's license and through the payment of a fee in accordance with the duration of transmission, projection, and use.

In the CA-PN, the protocols with Costa Rica, Guatemala, and Nicaragua, alongside the PN-Taiwan and PN-Singapore provide that the owners, publishers, directors, editors-in-chief, deputy directors, managers and assistant managers of the domestic communications mass (audiovisual and printed) media must be Panamanian nationals. When the owners or

⁵⁰ Besides the PN-US, the exception relating to the hiring of a national and foreign artist does not figure under the CA/HD-PN and CA/CR-PN.

publishers are juridical persons, their shareholders, partners, directors and officers should be Panamanians. The PN-US, PN-Canada, PN-Mexico, and CA-Korea rather stipulate that for printed publications, such as newspapers or magazines, 100% of the ownership of such enterprises must be held, directly or indirectly, by Panamanian nationals; and the managers, including the publishers, editors-in-chief, deputy directors, and assistant managers, must also be Panamanians.

Finally, the Panamanian government has essentially ensured that the profession of journalist in the country may only be practiced by Panamanian nationals. This is further reinforced through an Annex II exception in favour of the journalist profession in the CA/ES-PN, CA/NI-PN, and PN-Peru. Within the latter, Panama has also taken a reservation relating to investment in, and the administrative or managerial personnel of, printed media. The PN-Singapore includes a broad exception, drawn from Australia's PTAs⁵¹, pertaining to the creative arts, cultural heritage and other cultural services, as well as broadcasting. Yet, its impact could only be limited as it figures in none of the other Panamanian negative-list PTAs.

51 'Creative arts' include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, creative online content, indigenous traditional practice and contemporary cultural expression, and digital interactive media, and hybrid arts work using new technologies to transcend discrete artform divisions. See Gagné and Jean-Desnoyers (2023, pp. 44-46).

*Table 8: Panama's Main Regulatory Exceptions
in Cultural Services*

	CA/ ES	PN- TW	PN- SG	PN- CL	CA/ HD	PN- US	CA/ CR	CA/ GU	CA/ NI	PN- CA	PN- PR	PN- MX	CA- KR
Property/ mana- gement/ licensing of com- muni- cations mass media	x	x	x	x	x	x	x	x	x	x	x	x	x
Foreign artists/ musical groups	x	x	x	x	x		x	x	x	x	x	x	x
National announ- cers	x	x	x	x	x	x	x	x	x	x	x	x	x
Journa- lism	x	x	x	x	x	x	x	x	x	x	x	x	x
Creative arts and cultural heritage			x										
Broadcas- ting			x										
Printed media											x		

*TW – Taiwan; SG – Singapore; CL – Chile; CA – Canada; PR – Peru;
MX – Mexico; KR – Korea*

*Source: Information drawn from services reservations under Panama's
negative-list PTAs.*

As found in other Central American PTAs, Table 8 shows that Panama has reservations for communications mass media, foreign artists, national announcers, and the profession of journalist. The first apply to the management and licensing/concessions of radio and television stations, and in seven PTAs (including three protocols under the CA-PN), to ownership and, beyond, to printed media. As for Nicaragua, there are less exceptions in the PTA with the United States. Broad Annex II exceptions figure in only two of the PTAs. Like its Central American partners, except for Costa Rica, the Panamanian exceptions tend to be modest.

8.2.- Panama's Positive-List PTAs

In its three positive-list PTAs, Panama has committed itself in advertising, printing and publishing, news and press agencies. In the case of advertising, NT is unbound under the CA-EFTA; while for printing and publishing, as well as news and press agencies, it is stipulated under mode 3 that an enterprise producing a print publication must be 100% owned by a Panamanian national and its managers must also be Panamanians. Under the CA-EU and CA-UK, entertainment is unbound under mode 1, while mode 3 is subject to the requirement for an employer hiring a foreign orchestra or musical group to hire a Panamanian one to perform at each of the locations where the foreign one performs for the duration of the latter's contract. A national artist performing with a foreign one must be hired on the same terms and with the same professional considerations, notably regarding the promotions, publicity and advertising of the event in various media. Lastly, under the CA-EFTA, audiovisual services are subject to commitments, more precisely, motion picture and video tape production and wholesale distribution (CPC 96112); motion picture projection (96121); radio and

television (9613), exclusively arrangements for the showing and screening of EFTA audiovisual services, subject that the medium for showing these is limited to Panamanian providers; as well as sound recording. The audiovisual entry essentially corresponds to the country's GATS commitments in the sector⁵².

Table 9: Panama's Main Commitments in Cultural Services

	CA-EU	CA-EFTA	CA-UK
Advertising	x	x	x
Printing and publishing	x	x	x
Motion picture and video tape production		x	
Motion picture projection		x	
Radio and television		x	
Sound recording		x	
Entertainment	x		x
News and press agencies	x	x	x

Source: Information drawn from services commitments under Panama's positive-list PTAs.

Like Costa Rica, Panama has committed itself in four sectors under the CA-EU and CA-UK, as indicated in Table 9. A key difference, though, is in the CA-EFTA, where Costa Rica has commitments in only two sectors and Panama in seven. If entertainment is not committed, the Panamanian government has commitments in four sub-sectors of audiovisual services. As the latter were already committed under the GATS, they

52 Other Panamanian GATS cultural commitments are in advertising, printing and publishing (WTO, 1997). As for El Salvador and Nicaragua, these are different than those under their positive-list PTAs. Beyond, Costa Rica and Guatemala have no GATS commitments relating to culture, while Honduras has limited ones in advertising (CPC 87120) (WTO, 1994d).

do not entail any further obligations from Panama beyond its accession protocol to the WTO.

9.- CONCLUSION

The Central American countries show a highly different scope of obligations relating to culture, depending on both the negotiation modalities of their PTAs and the states concerned. While the commitments are, overall, modest in the PTAs with positive lists, the negative-list ones entail a significant, in some cases near complete, liberalization of the cultural field. With the general exclusion of subsidies, Central American states maintain wide latitude to use financial measures for cultural policy purposes. Under the CA-EU/UK and CA-EFTA, Central American states have often partial commitments in four or five cultural sectors, while EU and EFTA countries have committed themselves in most of these sectors in their respective PTAs.

The negative-list PTAs reveal wide differences as to the number and scope of exception measures in favour of culture, essentially those of a regulatory type. On one side, Guatemala has only one, minor cultural reservation. With another exception for entertainment, alongside one concerning the senior management of social communications media, Honduras comes next in its degree of liberalization of the cultural sector. The latter is quite similar with respect to El Salvador, Nicaragua, and Panama. On the other side, by securing a larger range of regulatory measures, Costa Rica is the Central American country that has best preserved its ability to conduct cultural policies.

The type of Annex I cultural regulatory exceptions among Central American states is broadly similar, with restrictions

and royalties to the benefit of national artists or their unions, the senior management and/or concessions for broadcasting stations reserved to nationals or domestic firms. The latter type of measures does not, though, guarantee a more significant level of domestic content in such media. Costa Rica and El Salvador have restrictions for advertising, while Costa Rica and Panama have ones for journalists. Nicaragua has reservations in favour of international audiovisual or film productions and co-productions. Costa Rica is the only Central American country to have secured national content quotas in public broadcasting.

Costa Rica, El Salvador, Nicaragua, and Panama have various Annex II exceptions. Thus, Costa Rica has MFN exemptions in favour of audiovisual cooperation agreements. Some of these reservations are quite broad, applying either to electronic means and/or cultural industries/matters, audiovisual and/or broadcasting, encompassing the digital dimension. Yet, such exceptions only figure in a limited number of these states' PTAs, therefore raising issues as to their impact.

With the possible exception of Costa Rica, Central American states have deprived themselves of any significant possibility to protect their cultural sector through regulatory measures. In light of the negative-list approach used for nearly all of their PTA services negotiations, Central American countries have entered into obligations simply by not including policies and measures in their lists of exceptions. It is practically impossible to pull back on such commitments, even if a state came to realize that their application proved prejudicial to its cultural identity. Thus, a state that did not secure exceptions in favour of either domestic content quotas or audiovisual co-production agreements, as is the case for all Central American states except Costa Rica, will not be

able subsequently to adopt such measures despite their importance for the development of its own cultural expressions. Although all CACM countries are parties to the CDCE, the high degree of liberalization of the cultural sector in their PTAs runs afoul of its key tenets. The Convention underlines the importance for states of preserving flexibility to use a wide set of instruments, regulatory and financial, to respond to the challenges to their cultures, notably owing to trade negotiations and technological developments.

The high degree of liberalization of the cultural sector across Central American states may be attributable to one or more of the following factors. For Chase (2015, pp. 238-42), smaller countries, whose domestic cultural industries are less politically powerful or less exposed to commercial pressure, show less concern for the cultural sector and, thus, are most likely to liberalize audiovisual trade. Cultural industries are rarely national champions in the commercial sense, nor are they disproportionately large providers of jobs or particularly crucial to a country's overall economic output (Goff, 2007, pp. 3). The lack of cultural expertise or sensitivity among trade negotiators, the lack of pressure from professional cultural associations – often loosely organized and representing a poorly developed industry – as well as the greater influence of other more powerful sectors may also have led CACM countries not to protect their cultural sector (Vlassis and Richieri Hanania, 2014, pp.28).

A key question pertains to the reasons for the significant variations in the number and scope of states' regulatory exceptions for cultural policies in Central American PTAs. One may wonder if such exceptions were the object of tough bargains and/or entailed concessions in other sectors. In view of their similarity as small developing countries, none

of the Central American countries enjoys much more bargaining power or leverage in its dealings with bigger states or groupings, such as the United States, the EU, Mexico, or Korea. A look at the PTAs reveals that the overall importance of exceptions for different sectors, other than cultural, also varies greatly across Central American states. In fact, a greater number and scope of cultural reservations is most often accompanied by a greater number of exceptions in different areas. The number and scope of cultural trade reservations are as well fairly consistent, regardless of the partner with which a PTA was negotiated. There is a lesser number of exceptions in the PTAs with the United States (CAFTA and PN-US), but the usual cultural exceptions proper to each Central American state figure in these PTAs. Thus, rather than negotiation dynamics, the varying number and scope of the reservations relating to culture secured by Central American states in their PTAs mostly result from each state's trade policy choices and the importance attached to cultural policy considerations.

Relatively few PTA negotiations have been documented, while the cultural sector is either not or only tangentially addressed. For instance, why are Salvadoran artists and circuses protected the way they are? In the case of Costa Rica, has the relatively greater importance of services in its external trade played a role in the greater protection of its cultural sector? So, in order to know more about the reasons for the generally high degree of cultural liberalization across Central American states parties to PTAs and yet, in some cases, diverging outcomes of PTA negotiations relating to the cultural sector, further research at the domestic level would be warranted.

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