In Search of an Effective Trade Policy for the Film Industry: Lessons from Korea*

Jimmyn PARC** & Patrick MESSERLIN***

This article explores which trade-related policies are effective – that is both economically and culturally sound – to promote the film industry that has recently been highlighted more due to its prominent political, economic and cultural dimensions. By examining the trade-related policies of nine major countries for their film industries over the last forty years, several important findings are extracted which contribute towards a more pragmatic debate on 'trade and culture'. First, regulatory barriers such as import or screen quotas should be avoided at all costs since they do not protect the domestic film industry. Second, tax relief schemes are unreliable because they tend to offer excessive support to attract foreign film producers. Third, as a choice to be considered, subsidies should be kept reasonable in size and focus on consistent goals. Fourth, well-designed trade agreements can contribute greatly to enhance film policies. Finally, once combined, these results explain to a large extent the remarkable success of the Korean film industry over the last two decades, which can be a good bench marker for countries that want to enhance their film industry and to promote their culture.

1 INTRODUCTION

Should cultural products and services be treated differently from other goods and services? In addressing this question, politically loaded concepts have emerged like 'cultural exemption' in the 1992 Canada-US Free Trade Agreement (CUSFTA) and 'cultural exception' at the end of the Uruguay Round negotiations. It has also made the debate on 'Trade and Culture' one of the most controversial issues in international relations, resulting in the collapse of negotiations on the Multilateral Investment Agreement in 1998. In recent times, these concepts have morphed into the slightly less aggressive notion of 'cultural diversity' under the aegis of the UNESCO's 2005 Convention on the Protection and Promotion of the Diversity

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** Research associate at the EU Center, Graduate School of International Studies, Seoul National University and Visiting lecturer at Sciences Po Paris. Email: jimmynparc@gmail.com.
*** Professor emeritus at Sciences Po Paris. Email: patrick.messerlin@gmail.com

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of Cultural Expressions (hereafter the Convention).[1] However, in the 2010s, this controversial issue has again been the source of harsh conflict during the negotiations of the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP).

Throughout the troubled history of trade and culture, the film industry has maintained a very prominent position as a result of its social, political, and economic importance. In many countries – even those with a relatively more open trade regime – there are recurrent requests for strengthening existing protectionist measures or developing new ones for the film industry. This trend continues even in the era of digitization where consumption happens through multimedia devices, particularly in emerging markets with huge consumer pools such as China and India.

As yet most studies have been too narrow in their focus on this difficult question, therefore a more prudent and pragmatic approach would be to examine the effectiveness of trade policies in the film industry over the past few decades, both from an economic and cultural perspective. In this regard, this study seeks to analyse which trade measures and agreements have achieved their intended economic goals while also being supportive of legitimate cultural concerns.

In exploring these issues, this article reveals how the Korean film industry emerged as a remarkably successful example. It was marginal in terms of admissions for domestic films as well as its overall market size in the early 1990s, but has become now larger and more vibrant than even many of the film industries in Europe, such as France, Germany, Italy, Spain, and the United Kingdom (hereafter the UK). This result was achieved following the liberalization of the Korean film market for which trade agreements made a significant contribution. It also received fewer subsidies than many other countries. Last but not least, Korea is the only industrialized country that supports both an open trade regime and the notion of cultural exception as stipulated by the Convention. All these features make the Korean film industry a life-size reference for a pragmatic trade and culture debate. Furthermore, important implications for other countries can be drawn by examining this particular case.

This article is organized as follows. Section 2 explains why the regulatory barriers on market access have become less prevalent in the nine largest film markets on which this study focuses: the aforementioned five European countries, Japan, Korea, Mexico and the United States (hereafter the US). Section 3 examines the contribution of trade agreements to this remarkable evolution. Section 4 focuses on subsidies and tax relief schemes which are the central instruments of

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1 Mira Burri-Nenova, *Trade and Culture in International Law: Paths to (Re)conciliation*, 44(1) J. World Trade 49–80 (2010).

public support to film industries today, and it scrutinizes their pros and cons that are often overlooked. Section 5 analyses the current limits and potentialities of trade agreements to deal with subsidies in the film industry. Section 6 connects the success of the Korean film industry to its policies. The conclusion suggests further studies to expand the analysis presented in this article.

2 THE DECLINE OF REGULATORY BARRIERS ON MARKET ACCESS

Regulatory barriers on market access are used to restrict the entry of foreign films to domestic markets. A few examples include import and screen quotas after the 1920s, dubbing requirements since the 1930s, and quotas on broadcasting foreign films on TV after the 1960s.[2] Although most of these measures have disappeared, there are still recurrent requests to re-establish them in various countries around the world. This section explains why these barriers are intrinsically unable to protect the domestic film industry and then presents a rigorous assessment on the current status of these barriers.

2.1 The intrinsic inefficiency of regulatory barriers

Import quotas are designed to restrict the number of foreign films imported. However, they do not place a limit on the number of moviegoers who go to watch these films. This then induces companies to import the most successful foreign films so that they receive the largest earnings. By contrast, the domestic films that are in competition with these foreign films tend to be of lower quality – this is why import quotas are imposed in the first instance – hence they generate low earnings. In short, import quotas create more demand for successful foreign films than low-quality domestic ones. This creates 'unfair competition' in the domestic market and stands in opposition to what was generally expected to happen when implementing import quotas. Therefore, granting them is not the solution for promoting a country's film industry.

2 Import and screen quotas in the film industry have been prevalent and politically sensitive barriers since the 1920s. In 1948, GATT Art. IV exempted them from the general prohibition of import quotas. In 1994, the EU-US fight on TV quotas almost derailed the final conclusion of the Uruguay Round. *See* Bill Grantham, *Some Big Bourgeois Brothels, Contexts for France's Culture Wars with Hollywood*. (Luton, UK: University of Luton Press 2003); Today, major countries want to extend them to digital providers; *see* for instance, Council of the European Union, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities*, Guidance for future work, Interinstitutional File: 2016/0151 (COD)k (Brussels: Council of the European Union 24 Apr. 2017), p. 8.

Screen quotas reserve a minimum number of days per year that a domestic film is shown, but not the number of times it is screened. However, they cannot guarantee a large audience to go and watch these domestic films. As a result, movie theatres are induced to manipulate the regulations by all possible means. When the quality of domestic films is poor, movie theatres will then show foreign films many times a day as opposed to once or a few times a day for domestic films. By contrast, when the quality of domestic films is good, movie theatres fill up the minimum number days with only a few successful domestic films before shifting to foreign blockbusters. Hence, screen quotas hinder cultural diversity.

The history of the Korean film industry is illustrative of the huge distortions caused by quotas.[3] Before import quotas were abolished in the late 1980s, Korean companies produced rapidly a number of low-quality domestic films known as 'quota quickies' so that they could gain an official license to import a greater number of successful foreign films. These quota quickies were not popular and did not generate much earnings, which led to fewer Korean films being produced and thus fewer foreign films being imported under the import quota regime. As a result, the size of the Korean film market shrunk significantly throughout the 1970s. The situation continued to deteriorate later under the screen quota regime.

2.2 Assessing the current level of barriers and measures

Table 1 presents the overall Services Trade Restrictiveness Index (STRI) which estimates the current level of barriers and measures for film industries around the world (column 1).[4] These indexes highlight an interesting point: the Korean and Japanese film industries are the most open among the selected countries. That noted, this article divides STRI into three main components which differ fundamentally by the type of international negotiations and agreements they call for: the regulatory barriers on market access (column 2), measures on movements of capital and labour (column 3), and other barriers (column 4).

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[3] For a detailed analysis, *see* Jimmyn Parc, *An Eclectic Approach to Enhancing the Competitive Advantage of Nations: Analyzing the Success Factors of East Asian Economies with a Focus on the Development of South Korea*, PhD Thesis, Seoul National University, Université de Paris IV (2014); *see also* Jimmyn Parc, *The Effects of Protection in Cultural Industries: The Case of the Korean Film Policies*, 23(5) Int'l J. Cultural Pol'y 618–633 (2017).

[4] The STRI database identifies measures that can restrict trade in twenty-two services sectors for forty-five countries. Out of a total eighty-one potentially restrictive measures in the film industry, forty eight are found restrictive in at least one of the nine countries covered by this study. The STRI takes values between zero and one, one being the most restrictive. *See* Massimo Geloso-Grosso, Iza Lejárraga, Hildegunn Nordås, Frederic Gonzales, Sébastien Miroudot, Asaki Ueno & Dorothée Rouzet, *Services Trade Restrictiveness Index (STRI): Construction, Architecture and Engineering Services* (Paris: OECD 2015).

Table 1 Level of the Regulatory Barriers and Measures (Selected Countries, 2017)

	Barriers and Measures in the Film Industry [(2) + (3) + (4)]					
		Market Access		*Measures on Inputs [(3a) + (3b)]*		*Others*
	(1)	*(2)*	*(3)*	*Capital (3a)*	*Labour (3b)*	*(4)*
France	0.228	0.054	0.071	0.018	0.053	0.103
(%)	100.00	23.68	31.14	7.89	23.25	45.18
Germany	0.173	0.015	0.092	0.025	0.067	0.066
(%)	100.00	8.67	53.18	14.45	38.73	38.15
Italy[a]	0.273	0.029	0.114	0.047	0.067	0.130
(%)	100.00	10.62	41.76	17.22	24.54	47.62
Japan	0.105	0.000	0.050	0.015	0.035	0.055
(%)	100.00	0.00	47.62	14.29	33.33	52.38
Korea	0.153	0.044	0.082	0.025	0.057	0.027
(%)	100.00	28.76	53.59	16.34	37.25	17.65
Mexico	0.273	0.040	0.124	0.069	0.055	0.109
(%)	100.00	14.65	45.42	25.27	20.15	39.93
Spain	0.194	0.029	0.075	0.022	0.053	0.090
(%)	100.0	14.95	38.66	11.34	27.32	46.39
US	0.158	0.015	0.092	0.025	0.067	0.051
(%)	100.00	9.49	58.23	15.82	42.41	32.28
UK	0.212	0.015	0.140	0.040	0.100	0.057
(%)	100.00	7.08	66.04	18.87	47.17	26.89

Data Source: STRI database. Authors' calculations.

Regulatory barriers are defined in this study as the tariffs, quotas, and any restrictions that limit the access of foreign films to the country's domestic market. Once converted into percentages, these barriers represent a small share of a country's total STRI (column 2). The exceptions are France, mainly due to dubbing regulations, and Korea, mostly due to the screen quotas. As trade negotiators are well accustomed to dealing with such kinds of barriers, reducing or eliminating them in the case of the film industry can be done in the traditional context of trade agreements.

There are also measures to limit the entry of capital and/or labour (columns 3a and 3b) that foreign film-makers need for producing films in a host country. Table 1 shows that the regulatory measures on capital movement contribute less to the overall indexes than those of labour movement, except for Mexico. As these measures are generally enforced in all sectors of the country, reducing or eliminating them requires the negotiation of a much more complex framework – that is, an economy-wide agreement covering movements of production factors. In trade parlance it is often referred to as a 'deep integration' agreement.

Finally, there are the other regulatory measures (column 4), such as competition rules, intellectual property rights, or rules on cross-border data flows. They reflect the general complexity of the regulatory framework in the selected countries. Interestingly, they are significant in France, Italy, Spain, and Mexico, but, much less so in Korea. Even deep integration agreements are unlikely to address these measures which are generally dealt with in the context of domestic reforms.

3 THE ROLE OF TRADE AGREEMENTS REGARDING BARRIERS TO MARKET ACCESS

The main role of traditional trade agreements is to eliminate or reduce the barriers to market access, and to harness them through international commitments. The existing literature on trade agreements in audiovisual sectors does not suggest that they have played such a role over the two last decades: commitments – either in multilateral or bilateral agreements – are rather limited in both scope and legally binding terms.[5] By contrast, this study highlights a more positive assessment based on three specific trade agreements since the 1980s where the services sectors began to be involved in international trade negotiations. One agreement involves Mexico and the US and two others involve Korea and the US among the selected

[5] For multilateral agreements, *see* the following references; Yvan Bernier, *The Recent Free Trade Agreements of the United States as Illustration of Their New Strategy Regarding the Audiovisual Sector*, Seoul Conference 2004 Ministère de la Culture, Québec, Canada, http://www.diversite-culturelle.qc.ca/index.php?id=133&L=1; Caroline Pauwels & Jan Loisen, *The WTO and the Audiovisual Sector*, 18(3) Eur. J. Comm. 291–313 (2003); Martin Roy, Juan Marchetti & Hoe Lim, *Services Liberalization in the New Generation of Preferential Trade Agreements (PTAs): How Much Further than the GATS?*, World Trade Organization. Staff Working Paper ERSD-2006-07 (Geneva: World Trade Organization Sept. 2006). For bilateral agreement, *see* the following references; Kenny Chase, *Audiovisual Goods and Services in Preferential Trade Agreements*, in *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements* (Andreas Dur & Manfred Elsig eds, Cambridge: Cambridge University Press 2015); Gilbert Gagné, *The Trade and Culture Debate, Evidence from U.S. Trade Agreements* (Lanham: Lexington Books 2016); Roy Martin, *Beyond the Main Screen: Audiovisual Services in PTAs*, in *Opening Markets for Trade in Services: Countries and Sectors in Bilateral and WTO Negotiations*, World Trade Organization (Juan Marchetti & Martin Roy eds, Cambridge: Cambridge University Press 2008).

countries.[6] By examining the different responses of Mexico and Korea to trade agreements, valuable lessons can be provided on their impact.

The role of the 1992 North American Free Trade Agreement (NAFTA) on the liberalization of the Mexican film industry was severely constrained by the 1988 CUSFTA. This agreement grants a broad 'cultural exemption' to Canada – notably the right to keep TV quotas for transmitting audiovisual works with 'certified Canadian content'.[7] NAFTA Chapter 21 on exceptions states that 'the rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the US' – hence Canada's cultural exemption was extended to the agreement between Canada and Mexico.[8] However, in the Mexico-US component of NAFTA, the Mexican government agreed to put a cap of 30% on its screen quota.[9]

This Mexican commitment can be considered to have little economic value because its film industry has not been able to meet such a target since the 1970s.[10] But, this view ignores the 'binding' value of the Mexican commitment – an important concept from a trade law perspective. This means that, for whatever reason if the Mexican government wants to impose a higher screen quota in the future, it cannot do so without the risk of having to compensate the US. Indeed, the binding level chosen in NAFTA has a special meaning in the Mexican context. In 1992, after a lengthy debate, Mexico adopted a federal law setting unilaterally a

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6 France, Korea, Mexico and Spain still maintain screen quotas. However, MPAA found that the French screen quota has not posed any problem for MPAA member companies for a long time. *See* Motion Picture Association of America (MPAA). *Trade Barriers to Exports of U.S. Filmed Entertainment* (Washington: Motion Picture Association, Inc. Nov. 1994); The Spanish quota does not suggest a strong barrier either according to MPAA. *See* Motion Picture Association of America (MPAA), *Comments Regarding the 2015 National Trade Estimate Report on Foreign Trade Barriers* (Docket: USTR 2014-0014, Oct. 2014), https://www.mpaa.org/wp-content/uploads/2015/12/2015-MPAA-NTE-Report-Compiled.pdf; This study does not cover the intra-EU agreement known as the 1989 Directive 'Television without Frontiers' and its successors.

7 The NAFTA provision on exceptions (Annex 2106) reads: 'any measure adopted or maintained with respect to cultural industries, except as specifically provided in Article 302 (Market Access – Tariff Elimination), and any measure of equivalent commercial effect taken in response, shall be governed under this Agreement exclusively in accordance with the provisions of the Canada – United States Free Trade Agreement. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States.'

8 *See* NAFTA, Ch. 21, Annex 2106. The US decision to accept this exemption was purely political: President Reagan, a former President of the Screen Actors Guild, was so eager to lay the foundations of a North American neighbourhood that he conceded this exemption to Canada. *See* Jeremy Kinsman, *Negotiating with an Elephant: NAFTA's not for Sissies*, Policy Magazine 35–38 (Sept.–Oct. 2017).

9 NAFTA Annex I, Mexico, reads as: 'Thirty percent of the screen time of every theatre, assessed on an annual basis, may be reserved for films produced by Mexican persons either within or outside the territory of Mexico.' http://www.sice.oas.org/Trade/NAFTA/anx1amex.asp. Note that Mexico's commitment is not put in strongly legally binding words since it uses the verb 'may', not 'shall'.

10 Rodrigo Gómez Garcia, *El impacto del Tratado de Libre Comercio de América del Norte (TLCAN) en la industria audiovisual mexicana*, Tesis doctoral 261 (Barcelona: Universidad Autónoma de Barcelona 2006).

progressive reduction of the screen quota. From a starting level of 30% in December 1993, it was lowered to 10% in December 2017, with a zero quota by 1 January 2018.[11] In other words, Mexico's NAFTA commitment helped to buttress the first step in the liberalization of Mexican law.[12]

In sharp contrast, the Korea-US Film Agreement has been a crucial ingredient in the success of the Korean film industry. It was negotiated at the request of the US and was completed in two steps in 1985 and 1988. As a result, the Korean import quota was abolished and after 1988 the US studios were able to establish their own distribution subsidiaries in Korea. All of this forced the domestic film companies to abandon their rent-seeking behaviour.[13] This change pushed the Korean film companies, who were vertically integrated, to overhaul their strategy. One of their first efforts was to invest in Hollywood productions in order for them to be able to exclusively distribute these partially self-funded films in Korea. While most of these investments failed, the Korean film companies still learned a great deal about the American way of producing and distributing films, and were able to become more globalized and competitive.[14]

Indeed, the impact of the US film agreements on the development of the Korean film industry was dramatic. During the decade preceding the agreements, the Korean film industry released around ninety films per year with an average revenue of KRW0.9 billion per film (roughly USD0.8 million at the current exchange rate). From 1989 to 2005, around seventy-five films per year were released with an average revenue of KRW2.7 billion per film (roughly USD2.4 million at the current exchange rate).[15] This huge increase in the average revenue reveals how the quality improved significantly.

[11] Ley Federal de Cinematografia, *Nueva Ley publicada en el Diario Oficial de la Federación el 29 de diciembre de 1992. Texto vigente. Última reforma publicada DOF 28-04-2010.* (Estados Unidos Mexicanos 2010), http://www.imcine.gob.mx/sites/536bfc0fa137610966000002/content_entry537f86d693e05abc55000278/53d19eb09d7279bf03004ffb/files/1.pdf.

[12] The NAFTA provision on screen quotas is often accused of being responsible for the current low production of the Mexican film industry. It is beyond the scope of this paper to examine this argument in depth. However, two points should be noted. On the one hand, the low Mexican film production capacity predates NAFTA and is largely due to inefficient state-ownership of the Mexican film industry until 1979. Afterwards, privatizations weakened the industrial links between producers and distributors, contrary to the Korean case. On the other hand, a NAFTA provision (s. 1108.I(c)) sets that any unilateral post-NAFTA liberalization should be sooner or later bound under NAFTA (the so-called 'ratchet' clause). In other words, the zero screen quota is likely to become part of the NAFTA renegotiation process. On this specific point, *see* Motion Picture Association of America (MPAA), *Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico* (Washington: Motion Picture Association of America 12 June 2017), https://www.mpaa.org/wp-content/uploads/2017/06/MPAA-filing.pdf.

[13] Before the abolishment of the import quota, Korean companies generated earnings from importing and distributing successful foreign films. They were not interested in investing in Korean films or enhancing the quality of them. *See* Parc (2017), *supra* n. 3.

[14] For a detailed analysis, *see* Parc (2017), *supra* n. 3.

[15] Figures in Korean Won are expressed in constant Won at 2010 prices.

Lastly, as a result of the 2006 Korea-US FTA negotiations, the Korean screen quota was cut by half, from a minimum of 146 days to 73 days per year. As in the case of Mexico, this commitment could be seen as possessing little economic value from a pure negotiation perspective in terms of market access. This is because since the early 2000s, Korean film companies have been successful enough not to require the screen quota – although the perception among the public and film-makers was that it was needed. While the admissions for Korean films plunged between 2007 and 2009, the Korean film industry adjusted its business structure during this time and has re-emerged as globally more competitive with a healthy domestic environment.[16] However, as in the case of Mexico, this cut had from a trade law perspective the intrinsic value to 'bind' the level of the Korean quota.

4 TODAY'S CENTRALITY OF FINANCIAL SUPPORT

Financial support is usually introduced as a transitory cushion for the domestic film industry when regulatory barriers have been lowered or eliminated. This was the case in France and the UK (through the 1950s and the early 1960s, respectively), Mexico (after the 1992 Federal Law) and Korea (since the 2007s).[17] It has progressively become a permanent feature of film policies, and today it is by far the dominant instrument across the world. A key reason for this evolution is that, contrary to regulatory barriers, financial support can be less discriminatory since all sectors in the film industry – film-makers, distributors, movie theatres, etc. – can have access to funds if domestic regulations allow it, as often is the case.

4.1 The rise of massive financial support

Financial support mainly consists of two different types: subsidies *stricto sensu* which are direct transfers, mostly from public budgets, and tax relief schemes which are comprised of tax waivers, credits, grants, or cash rebates. This section focuses on France, the UK, and the US who all provide the largest amount of support in the world. Korea is also covered for comparison sake. These countries provide all the

[16] For a detailed analysis of this plunge, *see* Parc (2017), *supra* n. 3.

[17] The Korean government began to grant film subsidies in the mid-1990s, but this was due to the realization of the economic potential of film industry. After 2007, due to screen quota cut as a result of Korea-US FTA, the Korean government increased considerably the amount of subsidies. For France and Korea, *see* Patrick Messerlin & Jimmyn Parc, *The Real Impact of Subsidies on the Film Industry (1970s-Present): Lessons from France and Korea*, 90(1) Pac. Aff. 51–75 (2017); For Mexico, *see* Jorge Mario Martínez Piva, Ramón Padilla Pérez, Claudia Schatan Pérez & Verónica Vega Montoya, *The Mexican Film Industry and Its Participation in the Global Value Chain*, Estudios y Perspectivas, No. 122, ECLAC Subregional Headquarters in Mexico, Mexico, D.F. (Oct. 2011), http://archivo.cepal.org/pdfs/2011/S20111039.pdf.

various forms of support with the aim to develop a lively domestic film industry in terms of numbers of admissions and films produced. As was done for the previous analysis on regulatory barriers, this section explores the key limits faced by each type of support.

In Table 2, Korea, France, and the UK illustrate three cases of subsidies. Compared with these countries, Korea runs by far the smallest subsidy scheme. It is noteworthy that Korea has set up an investment film fund involving public authorities and private operators (column 8) as well as provides subsidies (column 1).[18] France runs mainly two kinds of subsidies; one is granted to the French film industry *stricto sensu* (column 2) while the other is granted to French TV channels for producing films (column 3). The UK grants subsidies under the title of 'total public sector selective investment' to British films through roughly twenty institutions, which includes various government departments, the National Lottery, Channel 4, and the BBC among others (column 4).

Table 2 Financial support in the film industry (selected countries, 2005-2016, constant 2010 USD)

	Subsidies				*Tax Relief*			*Investment Funds*
	Korea	*France*		*UK*	*France*	*UK*	*US*	*Korea*
	(1)	*Film (2)*	*TV(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
2005	n.a	383.8	111.4	n.a.	36.7	n.a.	123.0	n.a.
2006	34.7	354.0	114.8	221.7	52.1	243.7	239.2	8.3
2007	68.8	352.4	107.7	235.7	63.1	204.8	556.6	9.5
2008	81.7	357.5	117.4	240.4	75.7	171.3	779.0	27.7
2009	77.0	305.3	98.4	248.6	76.3	160.9	757.9	53.5

18 From a legal point of view, funds in column 8 are investments, not subsidies. However, for the sake of transparency and exhaustivity, Table 2 presents these funds because there is no available information allowing to check whether these funds abide by market rules or have a notable subsidy dimension – for instance, by generating rates of return systematically lower than those required by the market. That said, even if one adds up both subsidies (column 1) and investment funds (column 8), i.e. assumes that all Korean investment funds are de facto subsidies, Korea has still much less subsidies than other countries. *See* Deok-Joo Lee, Jin-Soo Shin & Kyung-Taek Kim. Analytic Hierarchy Process Analysis on the Economic Effects of the Film Development Fund in Korea. *Proceedings of the World Congress on Engineering and Computer Science* vol. II, WCECS (25–27 Oct. 2017). San Francisco, USA; France also runs a very modest investment fund (SOFICA). Table 2 includes this fund in the French subsidies because it has a clear subsidy component under the form of income tax rebates for the private investors.

	Subsidies				*Tax Relief*			*Investment Funds*
	Korea	*France*		*UK*	*France*	*UK*	*US*	*Korea*
	(1)	*Film (2)*	*TV(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
2010	67.8	311.8	92.2	253.9	75.3	227.9	900.1	90.8
2011	96.5	406.0	101.0	234.7	72.1	313.5	1116.8	126.3
2012	98.5	419.3	94.8	232.1	88.5	312.9	1413.5	163.7
2013	99.4	414.9	104.2	241.6	79.5	320.1	1430.3	93.3
2014	105.9	447.6	92.0	240.0	104.9	347.6	1548.8	128.8
2015	94.5	420.9	86.1	248.6	106.3	422.4	1335.0	107.9
2016	77.6	448.8	105.3	259.2	109.7	475.2	1440.2	48.8

Notes: *Korea: Subsidies schemes (General and Special Accounts, Movie Pictures Development Fund in column 1) and investment scheme (Fund of the Funds in column 8). France: subsidies granted by the CNC to the film industry (column 2) and to the broadcasting industry as film producers (column 3) and tax relief schemes for domestic and foreign films (column 5). UK: subsidies mostly granted to domestic production (column 4) and funds available for tax relief (column 6). Data on fiscal years have been recalculated on the basis of calendar years. States of the US: States' tax reliefs (column 7).*
Sources: Korea: Ministry of Culture, Sport and Tourism. France: Centre National de la Cinématographie. UK: British Film Institute. US States: Thom (2018).

The UK (column 6), thirty-one states of the US (hereafter US states) alongside Washington, D.C., Puerto-Rico, and the US Virgin Islands (column 7), as of January 2018, and to a smaller extent France (column 5) illustrate three cases of tax relief schemes.[19] The UK launched its scheme in the 1990s in order to attract specifically foreign film-makers – de facto US major studios – to produce (parts of) their films in the country. In the early 2000s, a growing number of US states introduced their own tax relief schemes as a way to enjoy the economic benefits of the film business. Each state has a different, generally wide, coverage of the 'eligible expenses' providing tax relief.[20] Most of these schemes do not require a specific

[19] The first state in the US to adopt such a program was Louisiana in 1992. The number of states involved (but not in terms of funds spent as shown in Table 2) peaked in 2009, with forty-four states, plus Washington, D.C. and Puerto-Rico running such schemes. *See* National Conference of State Legislatures, *State film Production Incentives & Programs* (30 Jan. 2018), http://www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx.

[20] *See* National Conference of State Legislatures, *supra* n. 19. In addition to US states' tax relief schemes, there are various forms of support from the US Federal Government to the film industry. This support, mostly based on ss 181 and 199 of the Internal Revenue Code, is mostly granted under the form of tax deductions to the owners of the film. As these very complex provisions have been disrupted and

nationality in order to be eligible, but the major US studios seem again to be de facto the largest beneficiaries. It is noteworthy that the amount of tax relief provided by a few US states are as large as the total subsidies granted by some individual EU Member States. For instance, California has a film credit program of USD330 million since 2015, hence comparable in size to the UK subsidies shown on Table 2.[21]

Unfortunately, the information on subsidies and tax relief schemes in other countries is scant. In Europe, the total support of twenty-eight EU Member States was estimated to be roughly USD2 billion in 1999, which is the latest available figure.[22] The information on tax relief schemes is even scarcer. However, it should be highlighted that these countries are openly competing in terms of such schemes, especially with respect to foreign film-makers. For instance, France and Germany have recently increased the funds that will be available for tax relief schemes to attract foreign studios: between 2016 and 2018, these funds have risen from USD60 to 150 million in Germany and from USD 14 to 66 million in France. Both countries have justified their decisions by the need to match each other's tax relief schemes as well as that of the UK.[23] But who are the beneficiaries of these schemes and can tax relief bring about sustainable economic benefits to the host country or region?

4.2 Unexpected effects of subsidies

Regarding the role of subsidies, the administrating bodies – CNC for France, KOFIC for Korea, and BFI for the UK – generally seek three desirable goals: (1) increase the number of domestic films produced; (2) enhance the quality of domestic films, hence boost admission numbers; and (3) expand the market size

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amended numerous times, it is difficult to assess thoroughly their magnitude and impact over time. As a result, they are not covered by this study.

21 Joshua McCaherty, *California Triples Film Tax Credit*, Tax Foundation (Washington, D.C.: Tax Foundation Sept. 2014), https://taxfoundation.org/california-triples-film-tax-credit/. *See also* http://film.ca.gov/tax-credit/.

22 Susan Newman-Baudais, *Public Funding for Films and Audiovisual Works in Europe*, A report by the European Audiovisual Observatory (Strasbourg: Council of Europe 2011).

23 Françoise Laborde, *Avis sur le projet de loi de finances 2018*, Tome IV, Fascicule 3, Médias, livre et industries culturelles: livre et industries culturelles, Sénat, République Française, Session ordinaire de 2017–2018, No. 112. (2018): 109, http://www.senat.fr/rap/a17-112-43/a17-112-430.html; Udo Bomnüter, *State Aid for Film in Germany: Analyzing Institutions and Discussing Efficacy*, in *Handbook of State Aid for Film: Finance, Industries and Regulation*, (Paul Murschetz, Roland Teichmann & Matthias Karmasin eds, Springer International Publishing 2018), DOI 10.1007/978-3-319-71716-6; Diana Lodderhose, *Germany to Court Hollywood with New $80M Film Fund* (Deadline|Hollywood 2017), http://deadline.com/2017/03/german-courting-hollywood-with-new-big-budget-film-fund-dfff2-1202042923/. It is noteworthy that, ten years before the same argument was used in the UK for justifying an increase in British film support; *see* House of Lords, *Communications Committee, The British Film and Television Industries*, First Report, Session 2009–2010 (London: House of Lords 14 Jan. 2010) Ch. 2, Recital 60, https://publications.parliament.uk/pa/ld200910/ldselect/ldcomuni/37/3706.htm.

by increasing the number of total admissions for both foreign and domestic films in order to ensure a more lively film culture in the country.[24] When the target of subsidies is well defined and implemented with sound goals, trade policy analysis suggests that they can play a positive role for promoting the domestic film industry.[25] However, in practice this is rarely the case and subsidies can quickly bring about unintended negative effects on the film industry.

Indeed, a thorough comparison of the French and Korean film industries over the last four decades does not support a correlation between the amount of subsidies and the goals achieved.[26] In fact, the Korean film industry has achieved all three goals with fewer subsidies than the French industry. While these results may be unexpected for many policy-makers, they are not very surprising. This is because, in the real world, subsidies inevitably inflate the costs of producing, marketing, and/or distributing films. The allocation of costs should ideally be 'optimized' by production companies based on market considerations. However, subsidies allow them to buy or hire inputs above the cost of what might have initially been planned. The film industry is particularly sensitive to such cost inflation because it crucially relies on a few specific inputs – directors, script-writers, lead actors and producers.[27] Because they are unique yet essential, specific inputs have the capacity to inflate costs in every economic activity. Those in the film industry are particularly able to do so due to their influence on the media and their strong political clout.

This reality suggests the following two propositions. First, the larger the film subsidies, the higher the risks of inefficiencies associated with cost inflation. Interestingly, this first proposition is consistent with the fact that French films have not performed better than Korean films. Although the French and Korean

24 *See* Centre National de la Cinématographie et de l'Image Animée (CNC), *Tout ce que vous avez toujours voulu savoir sur le CNC … sans jamais oser le demander* (Paris: CNC May 2013); It is important to stress that the third goal suffers from an intrinsic methodological bias since more subsidies should be expected to generate more films, but that does not necessarily mean to attract a larger audience.

25 Lack of space prevents a more detailed discussion in this article on the arguments justifying the use of subsidies. A theoretical survey can be found in: W. M. Corden, *The Normative Theory of International Trade*, in *Handbook of International Economics* vol. I (Ronald W. Jones & Peter B. Kenen eds, Amsterdam, The Netherlands: Elsevier Science Publishers 1984). A presentation in the context of policy-making in the audiovisual sector can be found in: Steven Globerman, *The Entertainment Industries, Government Policies, and Canada's National Identity* (Vancouver, Fraser Institute 2014), http://www.fraserinstitute.org.

26 Some have argued that the large number of films produced in France justifies subsidies. However, with much less subsidies, Korea has produced an increasing number of films which is today roughly equivalent to the French number; *see* Messerlin & Parc, *supra* n. 17.

27 The notion of specific inputs finds its source in one of the oldest economic analyses, the so-called 'Ricardian rent', which examines the distribution of the value added produced by an economic activity among 'specific' and 'mobile' inputs. Mobile inputs (for instance, those related to travel expenses, facilities, and daily expenses required by film production) are different from specific inputs to the extent that they are easily available and provided by competitive markets. As a result, mobile inputs have more difficulties to be paid in excess of what they receive usually.

domestic film markets are almost the same size, approximately USD1.5 billion in 2016, Table 2 shows that Korea's subsidies are less than 30% of the total French subsidies. The risks of cost inflation are thus likely to be much higher in France than in Korea.[28] Second, the wider and more complex a subsidy scheme, the higher the risk that different types of subsidies will be on a collision course. For instance, in sharp contrast with the Korean scheme which, in the 1990s, focused on infrastructure for the use of any domestic film company, the French scheme grants substantial subsidies to movie theatres in addition to film-makers. It turns out that subsidies to help improve the equipment used in movie theatres provide a significant advantage to US films which feature more 3D and 4D technologies than French films. It is also noteworthy to consider the fact that US films take advantage of these upgraded facilities funded by the French taxpayer and that the beneficiaries of these subsidies are private movie theaters.[29]

4.3 Tax relief schemes in question

So far, most of the existing studies assessing tax relief schemes are based on accounting methods estimating the increases in terms of jobs or value added generated by the schemes.[30] They generally find net benefits – more jobs or value added than in the absence of support. However, this approach is not satisfactory because it misses the crucial question on the best use of public funds, in other words their opportunity cost. Would the equivalent amount of money allocated

[28] Measuring the inflation of the costs generated by subsidies is difficult because this inflation is channelled via a myriad of practices, such as artificially inflating the provisional accounts presented when applying for the subsidies, or presenting actors or actresses' costs as fees paid for 'image rights'. E. g. the fees paid for 'image rights' have increased by 119% in France in the early 2000s. However, the Cour des Comptes notes macro-economic evidence pointing to this direction, such as the fact that the median and average costs of French films produced between 2002 and 2012 have increased by 5% which is more than the rate of inflation. Alternative measures relying on individual cases may provide a more limited but better idea of the magnitude of cost inflation. A well-known French film producer reports that the fees of French performers range from 500,000 to 2 million euros when they perform in French films, whereas they range from 50,000 to 200,000 euros when the same actors perform in foreign films; *see* Cour des Comptes, *Les soutiens à la production cinématographique et audiovisuelle: des changements nécessaires*, Rapport thématique public 75–78 (Paris, Cour des Comptes Apr. 2014); Vincent Maraval, *Les acteurs français sont trop payés!*, Le Monde (28 Décembre 2012) http://www.lemonde.fr/a-la-une/article/2012/12/28/les-acteurs-francais-sont-trop-payes_1811151_3208.html.

[29] *See* Messerlin & Parc, *supra* n. 17.

[30] For the UK, *see* Oxford Economics, *The Economic Impact of the UK Film Industry*, Supported by the British Film Institute, Pinewood Shepperton plc, British Film Commission and Creative England (London: Oxford Economics 2012); For the US, *see* MNP LPP, *Economic and Social Impacts of the Florida Film and Entertainment Industry Financial Incentive Program*, Preliminary Report Prepared for the Motion Picture Association of America (Mar. 2013), https://www.mpaa.org/wp-content/uploads/2014/01/Economic-and-Social-Impacts-of-the-Florida-Film-and-Entertainment-Industry-Financial-Incentive-Program.pdf.

to a tax relief scheme for the film industry generate more sustainable quality jobs and/or value added than if it was used for other purposes in the industry? Cost-benefit analyses regarding this question have found the costs to be larger than the benefits.[31] An alternative method for assessing the impact of tax relief schemes uses econometric methods testing the relations between the goal(s) officially targeted, such as jobs or value added, and the magnitude of tax relief schemes. As of today, these studies have not found a statistically significant relationship between job creation and increasing (or decreasing) tax relief schemes.[32]

That said, tax relief schemes have two substantial downsides which differ depending on the goals they seek to achieve. First, when attracting foreign film-makers for comparative advantages such as landscape or technical skills in a country, the danger is that the country may give 'excessively' generous offers. For instance, the existing studies on the current UK tax relief schemes suggest that it ensures production costs in the UK are roughly 30% lower than those in Los Angeles, and 5 to 15% lower than those in other countries such as Australia or Canada.[33] Such enormous cost differentials raise serious questions on the robustness for the justification of these schemes.

Second, tax relief schemes create a serious problem of sustainability. Some may highlight the benefits of the spill-over effects which could be obtained through working with foreign film-makers. They argue that these benefits can improve the comparative and competitive disadvantages of the host countries through tax relief. However, one should pay attention to the fact that foreign film-makers would come to a country to benefit from strong local advantages, not to improve local disadvantages. In other words, within the limited time of film production, foreign film-makers have incentives to bring in their own workers rather than train local workers who often lack the necessary skills, hence few opportunities to create spill-over effects. More importantly, tax relief schemes for foreign film-makers tend to discriminate against the domestic film-makers of the host country.

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31 *See* David Zin, *Film Incentives in Michigan*, Issue Paper (Lansing, Michigan: *Senate Fiscal Agency* 2010), http://www.senate.michigan.gov/sfa/Publications/Issues/FilmIncentives/FilmIncentives.pdf; New England Public Policy Center, *Cost-Benefit Analysis of Connecticut's Film Tax Credit* (Boston: Federal Reserve Bank of Boston 19 Jan. 2009), https://www.google.fr/search?ie=UTF-8&q=Cost-benefit+analysis+of+Connecticut%E2%80%99s+film+tax+credit&gws_rd=cr&dcr=0&ei=RIa3WviZE5DOwQLZsKnYDw.

32 *See* Michael Thom, *Lights, Camera, but No Action? Tax and Economic Development. Lessons from State Motion Picture Incentive Programs*, Am. Rev. Pub. Administration (2016), http://journals.sagepub.com/doi/metrics/10.1177/0275074016651958; Michael Thom & Brian An, *Fade to Black? Exploring Policy Enactment and Termination Through the Rise and Fall of State Tax Incentives for the Motion Picture Industry*, 45(1) Am. Pol. Res. 85–108 (2017).

33 *See* Olsberg|SPI, *A Comparison of the Production Costs of Feature Films Shot in Ten Locations Around the World*, A Report for the Office of the British Film Commissioner (London: UK Film Council Sept. 2008). Oxford Economics, *supra* n. 30.

5 THE ROLE OF TRADE AGREEMENTS REGARDING FINANCIAL SUPPORT

Can trade agreements contribute to a more effective use of film subsidies? Disciplines on subsidies in trade agreements are notoriously weak. Multilateral disciplines, such as the World Trade Organization (WTO) countervailing measures, can be used relatively easily to protect the domestic markets of the importing countries rather than to induce exporting countries to limit their subsidies. Bilateral disciplines on subsidies are also very difficult to implement, as illustrated by NAFTA. The film industry raises an additional problem – to define which subsidies are acceptable ('non-actionable' in trade parlance) and which ones are not acceptable ('actionable'). Integrating such cultural concerns in WTO disciplines on subsidies could be based on a 'reference paper' specifying the main criteria for subsidies in the film industry deemed to satisfy cultural concerns, but as yet such a paper does not exist.[34]

That said, the film industry offers a case example where trade agreements could indeed contribute to a more effective use of subsidies. This could be achieved by designing provisions on 'international coproduction' which would grant 'national treatment' to coproduced films *per se* and/or a wider set of film makers who coproduce films from the two signatories. These provisions would deal with the various aspects of the film production process in order for coproduced films to be treated as domestic films in the two countries. The Protocol on cultural cooperation in the Korea-EU FTA and Annex 7-B on audiovisual coproduction in the Australia-Korea FTA illustrate to some extent what could be pursued in these provisions.

If well-designed and enforced, coproduction provisions on national treatment would be like two kills with one shot. First, they would contribute towards easing the movements of capital and labour which are the most restrictive measures as shown by the STRI. However, if FTA Protocols or Annexes could contribute to this objective, they are unlikely to do so alone because regulations in the film industry are often very detailed. A pragmatic solution would thus consist of inviting designated regulators from the two partner countries to complement the work of trade negotiators. More precisely, regulators would be asked to assess the 'equivalence' of the regulations of the two countries in the film sector – that is, to decide whether, if different, a partner's regulation

[34] Emmanuel Cocq & Patrick Messerlin, *French Audio-Visual Policy: Impact and Compatibility with Trade Negotiations*, in *Cultural Diversity and International Economic Integration: The Global Governance of the Audio-Visual Sector* (Paulo Guerrieri, Lelio Iapadre & Georg Koopmann eds, Cheltenham, UK: Edward Elgar 2005).

could be considered as 'equivalent' in its effects to the corresponding regulation of the country at stake.[35]

Second, if shared by enough countries, these provisions could reduce the risks of 'subsidy races'. Such trends are currently occurring among a number of countries around the world. However, they also happen within each country itself. For instance, providing more attractive tax relief schemes for foreign film-makers induces their domestic counterparts to lobby the government to receive the same conditions for their own tax relief scheme. These international and domestic subsidy races reinforce each other. They increase the whole public support available to film industries around the world, hence amplify the related cost inflation.

6 KOREA AS A BENCH MARKER

Among the nine countries selected in this study, Korea is one of the least protected countries in terms of regulatory barriers and measures, and runs the smallest subsidy program, with a small tax relief scheme. In addition, the Korean film industry has been able to rely on trade agreements for reducing entrenched regulatory barriers although in recent years there has been some hesitation, notably in the case of subsidies.

Korea was initially not sure about the positive consequences of its trade agreements. Abolishment of the import quota in the late 1980s was only extracted under the threat of a US 301 action, and the screen quota cut in 2006 was imposed by the US as a non-negotiable precondition for getting an FTA which was in favour of Korea's manufacturing sectors. In both cases, the opposition of the Korean film industry and the public at large was extremely strong. However, as argued above, both large and small Korean film companies have recognized the opportunities presented by globalization and competition. In short, the key to the success of the Korean film industry has been a process of benchmarking, learning, and then innovating among non-subsidized private companies alongside less interventionist public policies over the last two decades.[36]

The best indicator of this success is to compare the evolution of admissions for domestic films over the past few decades in Korea and in the seven largest film markets. It is preferable to measure this evolution in number of admissions rather

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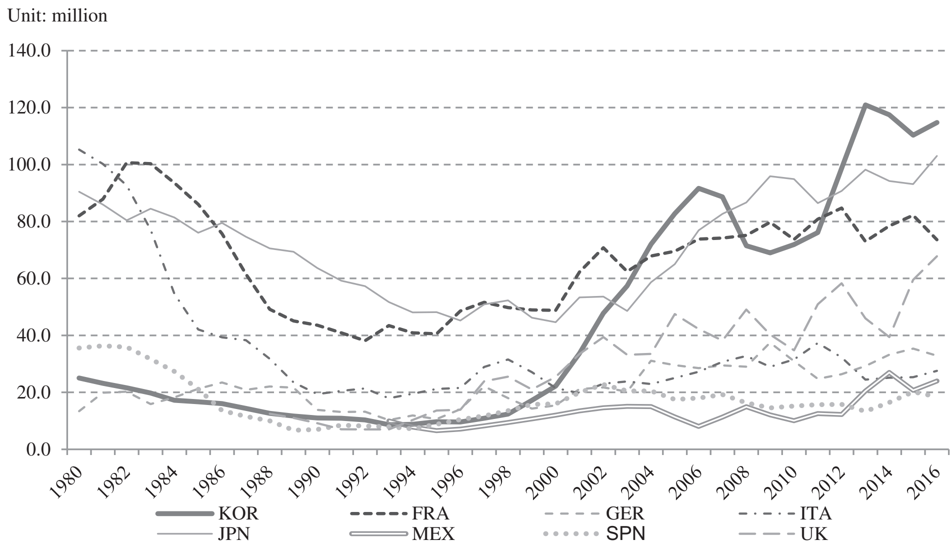
35 For more details, *see* Patrick Messerlin, *Negotiating Mega-Agreements: Lessons from the EU*, European University Institute, Robert Schuman Centre for Advanced Studies, Global Governance Programme, EUI Working Paper RSCAS 2014/112 (Florence, Italy: European University Institute 2014); *see also* Bernard Hoekman & Charles Sabel, *Trade Agreements, Regulatory Sovereignty and Democratic Legitimacy*, European University Institute Robert Schuman Centre for Advanced Studies Global Governance Programme, EUI Working Paper RSCAS 2017/36 (Florence, Italy: European University Institute 2017).

36 *See* Parc (2017), *supra* n. 3.

than in terms of market share because examining solely market share would offer a distorted view – it treats 5% of 100 as similar to 5% of 1,000. Figure 1 provides three key points on the number of admissions: (1) in the 1990s, Korea was trailing far behind other countries; (2) during the late 1990s and early 2000s there is the take-off of the Korean film industry, ten years after the Korea-US Film Agreements; and (3) since the mid-2000s, the Korean market for domestic films overtakes those of the other countries, despite a weak performance in 2007 and 2008. This blip was caused by a fall in private investments due to fears about the future of the film industry following the screen quota cut.[37]

Figure 1 Admissions for domestic films (selected countries, 1980-2016)



Sources: CNC (European countries and Mexico), KOFIC (Korea), MPPA (Japan). Authors' calculations.

Note: For getting a better sense of the trends, the curves illustrate two-year averages of admissions.

It is important to stress two more points from a cultural perspective. First, the market share of Korean films has increased from 35.1% in 2000 to 53.7% in 2016, contrasting with what has happened in the other selected countries, except Japan. However, some may point out that Korean films are currently not performing so well with a market share of 53.7% in 2016 compared to 63.8% in 2013. This statement misses that among the selected nine countries, only the US, Japan, and

[37] *Ibid.*

Korea enjoy a market share larger than 50%.[38] It also ignores the fact that Korean films have faced competition from a larger number of foreign films in 2016 than compared to 2013.[39]

Second, between the 1980s and the 1990s, Korea had the lowest annual number of admissions per inhabitant among the nine selected countries. In 2016, it had the highest annual number of admissions per inhabitant, with 4.2 admissions per inhabitant; that of France is 3.2 which is the highest in Europe.[40] Last but not least, the number of admissions for US films in Korean movie theatres has doubled between 2000 and 2016 – from roughly 41 to 89 million – whereas they have declined in the other selected countries, except in Mexico. In short, the success of Korea's domestic films has not crowded out foreign films, notably US ones, leaving a large exposure of the Korean audience – as well as Korean film-makers – to cultural diversity from around the world. All this shows how large the overall Korean market size has become through trade agreements rather than relying upon massive subsidies.

7 CONCLUSION

This study argues that, contrary to widespread belief, sound trade-related policies can actually be an effective tool towards enhancing film industries. First, it shows the inability of quotas to protect domestic film-makers. Rather they favour domestic interests that have little concern for promoting the domestic film industry. Second, it cautions on the dangers of tax relief schemes as they tend to offer excessive support for attracting foreign producers and present serious problems in terms of sustainability. Lastly, regarding subsidies, this study argues they should be kept at a reasonable size and be focused on consistent and clear objectives.

This article also shows that, if well designed, trade agreements can eliminate or reduce deeply entrenched economic distortions in domestic markets which are harmful to national culture. Moreover, they can develop in a pragmatic way 'national treatment' provisions that could substantially reduce barriers on the international movements of capital and labour – by far, the most important source of regulatory restrictions today in the film industry – as well as reduce or eliminate the discriminatory, hence distortionary impact of subsidy schemes. As a result,

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38 Statistics Korea, http://www.index.go.kr/potal/stts/idxMain/selectPoSttsIdxMainPrint.do?idx_cd=2444&board_cd=INDX_001.

39 In 2013, 183 Korean films and 722 foreign films have been released in Korea. In 2016, the respective figures are 302 and 1,218; *see* Korean Film Council, *State of the Korean Film Industry for 2016* (Seoul, Korea: Korean Film Council 2016).

40 Screen Australia, *Number of Feature Films Produced and Key Cinema Data, 2008–2016*, https://www.screenaustralia.gov.au/fact-finders/international-context/world-rankings/feature-films-and-cinemas.

trade agreements can contribute towards establishing a healthier environment for domestic film industries.

This study suggests two interesting areas for further research. First, the film industries are currently faced with digitization from on-demand audiovisual media services such as Netflix and Amazon Prime. In this regard, several countries, such as some EU Member States, have turned back to old and inefficient trade policies, including quotas. However, a preliminary review of the above results incorporating the new digital service providers suggests that the main findings of this article remain valid.[41] More broadly, from a policy perspective, the traditional film studios and the new digital service providers are in a stage of forming a new industrial structure. However, it happens that these two entities benefit from a very different tax treatment – a point often made. They also have a very different subsidy treatment – a point documented in this article but very rarely stressed. As a result, effective film policies in the future should thus be designed on a 'net tax-cum-subsidy' basis – a major effort to be done by governments.

The second interesting point comes from the fact that, so far, the question of subsidies has been examined from the angle of those who grant subsidies – governments. This article suggests to look also from the other side of the equation: the beneficiaries of subsidies – that is, from the film companies to the 'specific' inputs, such as directors, screenwriters, producers, and actors.

In this respect, the current trade and culture debate seems out of touch with reality. On the one hand, it insists on the primacy of 'national culture', overlooking the main lesson from history – the extent to which national cultures have learnt from each other over centuries by imitation and innovation. On the other hand, it largely ignores the fact that today the US film industry is benefitting from massive subsidies all over the world, including from governments which claim to be fighting for cultural exemption, exception, or diversity. This situation induces certain governments to adopt awkward policies – for instance to impose new taxes on firms while asking them to invest these 'taxes' in the production of films with 'local content'. History provides many illustrations of foreign artists having made more positive contributions to a country's culture than the local counterparts. However, these cases were dependent on the instinct and energy of enlightened 'patrons', hence not so easily applicable to 'heartless' institutions.

41 Patrick Messerlin, *Turning the Single Digital Market into a House of Cards? The European Local Content Quota on Netflix* (ECIPE, June 2016), http://ecipe.org/publications/turning-the-single-digital-market-into-a-house-of-cards-the-european-local-content-quota-on-netflix/.