Marching In: China’s Cultural Trade in Official and Press Discourse

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ABSTRACT: This essay analyses the official and media response to the WTO cases related to cultural products, which China lost. It aims to contextualize both the official discourse and the press discourse in terms of domestic politics and China’s trade priorities. It concludes that in the official discourse, China and the US are working at cross purposes, as they have fundamentally divergent concepts of trade in cultural products. The newspaper discourse is more moderate and emphasizes developmental and commercial issues, but is also subject to the priorities of Chinese politics.

KEYWORDS: China, WTO, cultural trade, intellectual property rights, political discourse, press.

The trade in cultural products remains one of the most persistent points of contention between China and its trading partners. Since the beginning of the ’90s, continuing high rates of media piracy, the relatively low import quota for motion pictures and the various barriers erected against foreign participation in the media market have brought the Hollywood lobby to press for trade pressure against China. This led to three episodes in which the United States Trade Representative (USTR) threatened to sanction China for its alleged failure to protect US intellectual property rights. Trade wars were only narrowly averted each time, after protracted negotiation. As a result, China swiftly instituted comprehensive intellectual property legislation and enforcement mechanisms. (1)

It also provided an extra stimulant for China to gain WTO membership. While China had started accession procedures to GATT in 1986 already, the post-Tiananmen environment had lent extra urgency to this issue. After 1989, the leftist wing of the Party had retrenched its ideological and economic position, until Deng Xiaoping used his "southern tour ([nanxuarms back)" to reassert China's resolute position on domestic politics, joining the GATT (and later, the WTO) also had another big boon. Its multilateral nature, and the WTO Dispute Settlement Mechanism would protect China from having to go through arduous bilateral trade negotiations on a regular basis, and from a non-renewal of its Most-Favoured Nation status by the US Congress.

At the same time, the post-Tiananmen environment that stimulated external trade, had also demonstrated to the leadership that control over public communication – which had lessened during the Eighties – had to be reasserted in order to prevent further organized dissent. (2) Furthermore, the leadership had been severely shocked by the abrupt end of Communism in Eastern Europe, which it largely ascribed to Western “peaceful evolution” efforts. (3) Hence, in the area of audio-visual media, the priority remained to keep foreign influence to a minimum. Concern about the ability of the Chinese cultural sector to withstand a foreseen onslaught by Hollywood further strengthened this resolve. (4) This is reflected in China’s services commitments: while the import quota for foreign films were raised to 20 per year, foreign media enterprises would be limited to minority participation in joint ventures, in certain designated areas which were less sensitive, or where the leadership wished to acquire foreign know-how and technology. The resulting situation – persistent high rates of piracy and low returns from the increasingly enticing Chinese market – frustrated Hollywood, and illustrated the conflict between the fundamentally differing vision of cultural products between the US and China. Where Hollywood’s ambitions are mainly commercial, requiring an open market, China sees media products as important political tools, requiring control.

This frustration led to the USTR filing two requests for consultations in 2007. DS362, China – Intellectual Property Rights and DS363, China – Audio-visual Products and Services. These respectively called into question denial of copyright to unauthorized products and criminal enforcement thresholds, and a number of import and distribution barriers discriminating against non-Chinese media enterprises. As such, they are not “typical” trade cases, neither in terms of product covered (films, television programmes and music), nor – to a certain extent – in terms of the specific measures addressed. They are at the nexus of interrelated aspects of international and domestic politics, joining the WTO (and later, the WTO).

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domestic politics, both in the United States and China, involve complex questions which, according to some observers, are on or even over the edge of what the WTO should concern itself with, and illustrate the potential conflict between a trade order established on liberal economic principles and Chinese authoritarianism. 

This essay aims to provide a better understanding of how this tension is perceived in the Chinese media and what this can tell us about the future developments of the Chinese media regime. This article is structured in the following way. First, I will provide a brief overview of both cases concerned. Second, I will analyze the official discourse concerning these cases, paying particular attention to where both parties in the dispute lay the emphasis, and contextualizing these in the broader framework of Sino-US relations. Third, I will outline how these cases are presented in the Chinese media; what the expected and preferred outcomes are, and which position this takes in the broader picture of Chinese media policy, in order to shed more light on how this discourse may function in agenda-setting, policymaking and change.

The cases

Since the late Eighties, piracy and counterfeiting had been a bone of contention between China and other trade partners, particularly the United States. Since then, China created a comprehensive legislative framework that largely complied with international standards, and after 2001, with China’s WTO commitments. Also, significant resources were dedicated to anti-piracy and counterfeiting enforcement efforts. In fact, few countries in the world spend more per capita on IPR enforcement than China. However, counterfeiting and piracy remained rampant, particularly in the media and software sector. Apart from piracy, Hollywood was also increasingly irritated by the barriers erected against foreign presence in the Chinese media market, exemplified by the screening quota for foreign cinema films, but which also entail restrictions on market access for products and operators, investment restrictions, censorship and content review procedures, etc. (1) In 2007, the USTR took the decision to file a request for consultations – the first step on the road to a WTO dispute – in two cases, DS362, concerning copyright law and enforcement standards and DS363, concerning market access for media products and operators.

There were two main US claims in DS362. First, it was claimed that Article 4 of the 2001 Chinese Copyright Law – which stated that works of which publication was prohibited, would not be protected by copyright law – violated the prohibition of formalities for copyright grant present in the Berne Convention, incorporated into WTO law by Article 9(1) TRIPS (Trade-related aspects of intellectual property rights). Second, quantitative thresholds for criminal copyright prosecution were alleged to exceed the standard in Article 61 TRIPS that criminal punishment must be available “at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale.” (2) A third, less important claim, concerned measures to dispose of counterfeiting products after removal of the counterfeited trademark.

In this case, both sides scored a number of points. The Panel ruled that the wording of Article 4, as well as the counterfeiting disposal rules, violated WTO rules. It also found that the US had not brought sufficient evidence to prove the empirical point that the minimum criminal enforcement standards against copyright piracy indeed exceeded the definition of “commercial scale.” The Panel Report was not appealed, and the findings of the Panel were quickly implemented. (3) This was possible because updating the inconsistent rules was relatively easy. In the case of the Copyright Law, Article 4 was updated to state that rights holders are required to exercise their copyright in accordance with the law, and that the State institutes a censorship regime.

In comparison, DS363 was a much larger case. It concerned a plethora of Chinese measures that were aimed to prevent foreign works and foreign actors from accessing the Chinese market. They were grouped under four major headings: trading rights under the Accession Protocol, market access commitments under Article XVI GATS, national treatment under Article XVII GATS and national treatment under Article III:4 GATT. (4) The claims concerned a variety of product areas, including cinema films, audio-visual products, publications and on-line music, and addressed issues related to barriers on company establishment, investment, import and distribution. In other words, DS363 struck at the heart of the Chinese foreign media control regime. (5) China’s defence was partly built on procedural grounds, and it successfully managed to exploit a number of procedural errors by the US. It also invoked on cultural exception as present in Article XX(a) GATT 1994. The US furthermore did not sufficiently argue a number of claims, leading to these not being considered by the Panel. (6) Apart from these, the US won across the board, as the Panel found that the measures at issue violated China’s accession commitments and general WTO discipline.

In contrast to the IP case, DS363 was appealed by both China and the US. China argued that trading rights commitments do not apply to cinema films and unfinished audio-visual products, that it could invoke the cultural exception in Article XX(a) GATT 1994 in a claim concerning the AP, and it disputed the scope of the GATS schedule entry on “sound recording distribution services,” claiming that this did not include on-line distribution. The US challenged the finding of the Panel that the requirement to conform to State planning, as present in a number of Chinese regulations, is necessary to protect public morals. The Appellate Body upheld most findings of the Panel, with the exception of finding that the cultural exception can be claimed with respect to the AP, and that the state plan requirement is not necessary for the protection of public morals.

10. In 1994, the State Administration of Radio, Film and Television (SARFT) had approved the importation of 10 films per year.
11. A detailed overview of these restrictions is available in Rogier Creemers, Explaining Audiovisual Media Piracy in China: Media Control, Enforcement and Globalization, Ph.D. thesis, Maastricht University, 2012, Chapter IV.
12. Article 61 TRIPS.
14. A fifth claim concerned national treatment under the Accession Protocol, but as a finding of inconsistency with Article III:4 GATT is a prerequisite for a finding of inconsistency under the AP, this claim was not addressed by the Panel.
15. It is important to keep in mind that the Chinese media regime is not solely concerned with foreign products, actors and services. While there are subject to stronger regulation in a number of areas, the domestic media market is very rigidly controlled as well, as the Party-State considers media control to be of the essence of its survival. See also David Shambaugh, “China’s Propaganda System: Institutions, Processes and Efficacy,” China Journal, no. 57, 2007, and Anne-Marie Brady, Marketing Dictatorship: Propaganda and Thought Work in Contemporary China, Lanham, Rowman & Littlefield, 2010.
Again in contrast with DS362, the findings of DS363 were never fully implemented. Cosmetic updates were made to a number of regulations, which only cosmetically addressed the findings of the Panel, and did not meaningfully address the issues underlying the US case. Rather, the US and China came to an agreement.

**The official discourse**

A lot about the underlying attitudes towards the international trading system can be deduced from the official discourse concerning the two cases at issues. In dispute settlement, there are three major phases. The first is the initiation of the dispute, which proceeds in two stages: a request for consultations and a panel request. The second stage is the Panel stage, ending in the publication of the Panel Report. In the majority of cases, the case will then proceed to the Appellate Body. The dispute can end at any stage, and it is up to the complainant to decide to proceed to the consultation and panel stages, while the respondent may also appeal a Panel Report.

The official discourse concerning DS362 and DS363 can be situated in these three stages. When the two requests for consultations were filed, the US Trade Representative stated that:

> The Chinese government’s attitude towards intellectual property rights protection has always been resolute, and its achievements obvious to all. [...] This runs against the consensus reached between the two countries’ leaders as to developing bilateral trade relations and properly handling trade problems.

Furthermore, it said the action would “seriously damage the two countries’ established cooperation and bring an unfavourable impact on bilateral trade.”

Later, Chinese vice-premier Wu Yi stated that:

> “The US action will further exacerbate the bilateral intellectual property cooperation.”

Wu Yi, Vice Premier of the People’s Republic of China.


Piracy and counterfeiting levels in China remain unacceptably high. Inadequate protection of intellectual property rights in China costs U.S. firms and workers billions of dollars each year, and in the case of many products, it also poses a serious risk of harm to consumers in China, the United States and around the world. We acknowledge that China’s leadership has made the protection of intellectual property rights a priority and has taken active steps to improve IPR protection and enforcement. However, while the United States and China have been able to work cooperatively and pragmatically on a range of IPR issues, and China has taken numerous steps to improve its protection and enforcement of intellectual property rights, we have not been able to agree on several important changes to China’s legal regime that we believe are required by China’s WTO commitments. Because bilateral dialogue has not resolved our concerns, we are taking the next step by requesting WTO consultations. [...] In the same vein, we have discussed with China in detail the harm to U.S. industries, authors and artists who produce books, journals, movies, videos, and music caused by limiting the importation of these products to Chinese state-owned entities, and the problems caused by Chinese laws that hobble the distribution of foreign home entertainment products and publications within China. These products are favorite targets for IPR pirates, and the legal obstacles standing between these legitimate products and the consumers in China give IPR pirates the upper hand in the Chinese market.

The Chinese response to this was regretful. The Ministry of Commerce issued a statement claiming that:

> "The USTR, has totally ignored the massive strides China has made. [The US action] flies in the face of the agreement between the two country’s leaders to propose dialogue as a way of settling disputes. [...] This will have an utterly negative impact and will inevitably badly damage bilateral intellectual property cooperation," she said, also warning it would “harm” cooperation over market access issues.

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The DS362 Panel Report was completed first, and its conclusions were received relatively well by both sides. The United States stated that:

Today, a WTO panel found that a number of deficiencies in China’s IPR regime are incompatible with its WTO obligations. These findings are an important victory [...] Having achieved this significant legal ruling, we will engage vigorously with China on appropriate corrective actions to ensure that U.S. rights holders obtain the benefits of this decision [...] The Panel did find, however, that it needed more evidence in order to conclude that actual thresholds for prosecution in China’s criminal law are so high as to allow commercial-scale counterfeiting and piracy to occur without the possibility of criminal prosecution. While this conclusion is disappointing, the United States is encouraged that the Panel, facing a case of first impression, set forth a market-based analytical approach that should help WTO Members and panels avoid or resolve future disputes concerning obstacles to criminal enforcement against counterfeiting and piracy. (22)

The Chinese side also claimed victory. MOFCOM claimed a “the expert group report rebutted the great majority of the US side’s claims and broadly vindicated China’s intellectual property system.” (23) Furthermore, MOFCOM maintained China’s right to censor publications. As DS362 was not appealed, there was no further official communication concerning this case, save for a notice by the USTR when the Dispute Settlement Body adopted the Panel Report. This notice confirmed that the United States would use “all appropriate tools” to ensure that trading partners keep commitments, and that the US would remain constructively engaged with China on IPR protection. (24)

DS363, being more complex and striking close at the heart of one of the Chinese leadership’s core interests, aroused more discussion. As the Panel Report was published, US Trade Representative Ron Kirk stated that:

Today, a WTO panel handed a significant victory to America’s creative industries. [...] These findings are an important step toward ensuring market access for legitimate U.S. products in the Chinese market, as well as ensuring market access for U.S. exporters and distributors of those products. We will work tirelessly so that American companies and workers can fully realize the market opening benefits that this decision signals. [...] This decision promises to level the playing field for American companies working to distribute high-quality entertainment products in China, so that legitimate American products can get to market and beat out the pirates. To me, that is a clear win. We believe that this report will help pave the way toward more open trade between China and America. (25)

China, again, was less pleased with the outcome of the case, as Ministry of Commerce spokesperson Yao Jian indicated that China “regretted” (yihan遗憾) the outcome of the cases, and considered filing an appeal. Yao further stated that:

China has always fulfilled its obligations on market access for publications, and the channels for foreign publications, films and audio-visual products to enter the Chinese market are extremely open” (shifen changtong)
Chinese side regrets the other rulings made by the Appellate Body. The Chinese side further reiterated that after China joined the WTO, it earnestly implemented the duties under the WTO agreement in the area of publications market access, and that the channels for foreign publications, films and audiovisual products to enter the Chinese market are "fully open." An official Xinhua press report further indicated that China had fully put forth the point of view that cultural products are special, and had requested the AB to "respect the true meaning of members' services commitments (zunzhong chengyuan youguan fuwu chengnuo de zhenshi hanyi)"
The press discourse after the cases

As a relatively simple case, in which China didn’t lose the most important issue, there was little newspaper analysis of DS362 after the case’s conclusion. This was slightly different with DS363, as a number of articles appeared around the publication of the Panel and AB reports evaluating the potential impact of the cases on the Chinese media sector. However, these articles were limited in scope: they concentrated mainly on the film sector, and some of them contained a number of factual mistakes, which influence the perception of the outcome of the cases.

Factual mistakes

One salient characteristic of a number of both Chinese and Western newspaper articles in these cases is the lack of factual understanding of both the content and implications of WTO rules and obligations. Some of these concern the relationship between import quota and moral concerns. China Daily writes, for example, “China imports 20 foreign films a year for theatrical release. The ruling, however, does not force China to let in products it thinks would meet censorship requirements, but many of these do not enter Chinese cinemas due to quota restrictions.”

This position is reflected interestingly in the People’s Daily after the WTO verdict, which further reminded China that “opening up is a must.” Nonetheless, even through the reports about the WTO accession agreement. Apart from the question whether this is legally possible or not, it would seem logical that this would be part of a broader renegotiation of the Chinese terms of membership, which may be politically nearly impossible in the present economic climate. Another article mentions a Chinese promise to phase out film import quota by 2011. This promise is not present in the Chinese Services Schedule that lays down the quota, nor is it present in the Sino-US agreement that paved the way for Chinese accession. Nonetheless, even through the reports about these quotas are wrong, they may reflect the expectations of policymakers and the industry, and influence further film policies. It may also be a tactic to prepare actors on all sides for an easing of the quota, which might take pressure of other areas where the Dispute Settlement Body (DSB) did find incompliance. Lastly, the People’s Daily writes that finding of incompliance would mean that China would have to accept retaliatory tariffs. While this may be true, it omits the possibility of compliance.

Opening up the film sector

By the time the Appellate Body made its decision in DS363, the Chinese cinema film sector had been growing at a rapid pace, which realigned the interests of different actors in the policy sphere. The number of cinemas has grown rapidly, as plans aimed to stimulate construction and renovation of cinemas nationwide are being progressively realized. This increase in screen real estate also requires more content, which in turn seems to cause increasing demands for films, including foreign films. At the time of the Panel decision, a number of articles were published which advocated for a more open media sector.

This position is reflected interestingly in the Nanfang Daily. This argued that opening media channels would not be a problem for censorship authorities, as they could simply expand to meet demand. Also, the paper stated that more competition would be good for the Chinese media sector, as it would push for better products. Assuaging potentially worried censors, and panning the inertia of government, it argued that allowing private capital into the television drama sector had provided better-received mainstream programmes than State actors had been. Finally, it asked the question how big the danger would be from foreign programmes, taking place far away from Chinese viewers, and containing imagery to which Chinese audiences would not have been used.

The Global Times, notably, published an English-language editorial after the Panel Report was published, in which it stated that foreign media enterprises could have a “fair share” of the Chinese entertainment market after the WTO verdict, which further reminded China that “opening up is a must.” Global Times castigated the Chinese media sector for not having engendered sufficient competition, and that public demand was “poorly fed.” The People’s Daily surveyed a number of Chinese film enterprises, who were confident that they would be able to survive competition from Hollywood. Nonetheless, these articles remain limited to the film sector and to increasing import quantities of foreign products — exactly the measure that did not come under question in the WTO cases.

On the other end of the scale, the People’s Daily interviewed a spokesperson from Phoenix Television, stating that the Panel Report should not be interpreted as a US win, but rather as “generally favourable” (zongtis-hang youli).
The news website Sohu did not expect that this verdict would effect a pro-
grammatic change in China’s programme of cultural structure reform, which
had been launched in 2004, and aimed to ensure that China’s cultural products
would have a stronger impact at home and abroad. (50) However, it was con-
cerned that the verdict might have an adverse impact on the development of
China’s domestic film sector, and cited director Liu Miaomiao, who urged China
to develop along a more realistic, low budget path, rather than confronting
Hollywood’s big budget megaproductions head-on. (51) This sentiment was
echoed in other media, who were concerned that China lacked the capacity,
the “Star System” and the structural setup to compete with Hollywood. (52)

After the case closed, however, media attention became subdued, and less
discussion was held in the Chinese press than in foreign newspapers. To a
certain extent, this is not strange. There are a few institutionalized interests
in China that could play the role of policy entrepreneurs (53) for foreign media
interests or media liberalization. Cinemas and film distributors, for example,
would benefit from a larger amount of – usually high-grossing – foreign
films on the market. The question, however, would be how the Chinese film
sector would deal with this, given that it is often characterized as being un-
derdeveloped, suffering from creative deficits, low income and growth op-
portunities, and badly hit by media piracy. A number of articles were
published that gauged this potential impact. The Nanfang Daily, for exam-
ple, ascribed the drive to attract more private investment into the film sec-
tor to WTO pressure. (54) It also analysed how this might lead to more
diversification in the film sector, amongst others the use of IMAX technol-
ogy. (55) The Global Times warned Chinese filmmakers to be more imagina-
tive. (56) One Apple fan site hoped that the verdict would mean that the
iTunes service would be launched in China. (57)

In the press, as well, the foreign film trade does not seem to be a priority.
In one article published the same week the AB decision was announced, ten
years of progress in the Chinese film sector were celebrated, without one
mention of the WTO case, the influence or competition from foreign films. (58)
Another article in the same feature discussing foreign competition does not
refer once to the potential increased competition after DS363. (59) Rather,
the month after the AB decision, the film Avatar, which had become the high-
est-grossing film in Chinese cinema history, was pulled from cinemas, al-
legedly to reduce competition for an upcoming biographic film of Confucius,
that had been heavily supported by the State (although the State Adminis-
tration of Radio, Film and Television [SARFT] officially denied this). (60)

The English language newspaper China Daily, however, did keep the dis-
cussion on its pages, by reporting on negotiations to lift the quota, (61) and
discussing the potential implications in a cautiously positive light. (62) Also,
more, by the second half of 2011, the public discourse on the media
sector became increasingly politicized. The perceived weakness of the Chi-
emphasis is put on the receiving side, apart from cautioned and conditional
language concerning “mutually beneficial” cultural exchange and learning
from “the excellent cultural achievements of mankind.” The militant lan-
guage of the Decision was supplemented by a speech Hu Jintao gave to the
6th Plenum of the Central Committee, which was later published in the Party
policy magazine Qiushi. In this speech, Hu warned against the “long-term
strategy” of “foreign hostile powers” that aimed to “Westernize and divide
China.”

The consequences of this Decision on the media sector became clear very
soon, with the SARFT taking the lead. In a brief period of time, it issued a
number of regulations, amongst others reducing the number of entertain-
ment shows on satellite television channels, prohibiting advertising in tel-
evision dramas, and limiting the amount of television dramas broadcast on
provincial television channels. In an interview with the People’s Daily, a
SARFT spokesperson stated that these measures were taken to enhance au-
dience choice. In December, the State Council published a draft law for
the promotion of the film sector. This law is aimed at lowering market ac-
cess barriers, enhancing financial input into the film sector, but also at
strengthening supervision and management. There are few provisions on
import of foreign films, and no indication of market liberalization In other
words, media sector reform in China at the moment is driven by central po-
itical considerations, in a direction of more control. Against this background,
it is difficult to see how media enterprises could openly advocate more
openness. Rather, it seems that the enterprises that are permitted to operate
– and hence, co-opted into the power structure, are more interested in
maintaining the status quo.

The 2012 Deal

In short, China’s implementation of the DS363 conclusions was very lim-
ited, and the powerful media administration was driving developments in
the cultural sphere towards stronger control and centralization, as well as
rejection of foreign influence. However, given the deepening economic crisis
and the need to engage China on other issues, and the difficulty of calcul-
ating appropriate values for retaliatory tariffs, there seems to have been
a lack of political will in Washington to push strongly for a resolution.
Nonetheless, it seems that the Chinese side wished to settle the matter,
and in February 2012, a deal was struck between vice-Presidents Jo Biden
and Xi Jinping, who was on his first visit to the White House. They agreed
that a new quorum of 14 “special films” would be instituted on top of the
20-per-year commitment in the Services Schedule, and would give prefer-
ence to films of which 3D and IMAX versions are available. Also, the portion
of revenue going to the film studio would be raised from 13 percent to 25
percent.

This deal was met with considerable enthusiasm on the US side, Vice-Pres-
ident Joe Biden said it would “make it easier than ever before for US studios
and independent film-makers to reach the fast-growing Chinese audience.”
The deal would also save “thousands of American jobs in and around the
film industry,” and give Chinese audiences “access to more of the finest
films made anywhere in the world.” MPAA Chairman Chris Dodd called it
a “major step forward in spurring the growth of US exports to China.” At
the Chinese side, there was a higher sense of confidence concerning
the Chinese film industry’s ability to meet the challenge of more US com-
petition. In a feature on the agreement, the People’s Daily stated that the
relationship between the US and Chinese film industries was no longer one
informed about this decision the day after the agreement was made. (82)

Most importantly, this agreement does relatively little to address the underlying issues. The Agreement does very little to move towards freer trade for cultural products with China, and does not address the letter or the spirit of WTO rules and the DS363 decisions. Hence, it remains to be seen how long it will take until Hollywood will restart lobbying for more market access in China, for example in the field of online media retail. Given the fundamental disagreement about the economic and trade nature of cultural products between the United States and China, this is perhaps the only deal that could have been made. It seems to fit within the film administration’s efforts to keep foreign content at bay, while attracting knowhow and technology deemed necessary to develop the Chinese film sector. Another manifestation of this line is the proliferation of film co-productions, (83) exemplified by an announcement that DreamWorks will open a joint venture animation studio in Shanghai. (84)

Conclusion

This essay aimed to provide more insight in the reception of WTO discipline in China in the field of cultural products and services. More specifically, it first analyzed the official Chinese discourse on the two WTO cases China – Intellectual Property Rights and China – Audiovisual, and compared it with the US discourse. Second, it aimed to understand the reaction and evaluation of the Chinese press, and contextualize it in the wider background of cultural policy. Third, it outlined the resolution eventually reached by both sides and the reaction thereto.

The official discourse shows that at least where these cases are concerned, China and the United States are working at cross-purposes, reflecting the basic divergence of their respective views of cultural products. The United States emphasize the rules-based nature of the WTO, the way in which they claim the Chinese measures at issue conflict with WTO discipline, as well as the limited nature of these cases in the whole of Sino-US relations. China, on the other hand, stressed the non-legal aspects of the dispute: the efforts that were made to conform to WTO requirements and the impact of the cases on the wider bilateral relationship, and the importance of censorship, even though China’s right to censor never came under issue. Also, China flatly denied the factual basis for the findings of the Panel and the Appellate Body in China – Audio-visual, even after these had published their reports. While official discourse should not be accepted at face value, this divergence nonetheless shows that China, at least in these cases, has not been very apt in using the language and style of the international trading system. Given the politically sensitive context in which it operates, the WTO dispute settlement body has consistently taken a textualist and legalist line in applying WTO law. (85) From the Chinese discourse, however, it seems that China considers the WTO to be a political institution rather than a legal one.

In the Chinese media, the cases weren’t subjected to much attention outside of factual reporting. The few articles that appeared evaluated the impact of the cases on the media sector, tapping into the developing narrative of cultural structure reform, commercial development and international soft power that has become increasingly prioritized in recent years. With the exception of the People’s Daily, most newspaper outlets are moderately positive about the prospects of the Chinese media market after liberalization, especially after the announcement of the 2012 deal. In particular, they emphasize Chinese filmmakers’ capacity to better respond to the demands of Chinese audiences and the beneficial role of more competition. Arguments concerning free trade are not made.

During recent years, the shifting political climate has steered cultural policy into another direction, and it is quite clear that opening the door to foreign cultural imports, or expanding upon the minimal commitments in the Services Schedule, is not a priority. What does this tell us about Chinese participation in the WTO? On the one hand, considerable care should be taken to expand findings about one specific (and politically very sensitive) to the whole range of WTO-related issues, especially given the high priority China seems to have given to WTO compliance in other sectors. On the other hand, it does help to highlight the Chinese expectations about the role of the WTO and Chinese commitments and the limits thereof. The Chinese discourse, both official and in the press, shows that the leadership has seen WTO accession as an instrumental move to maintain economic growth, legitimacy and authority. As a corollary of that, it is not willing to open up the cultural sector to the extent demanded by the United States, and has avoided to fully implement the findings from China – Audio-visual. This is in itself not strange. WTO Members have been in compliance with WTO discipline earlier, concerning copyright, (86) hormone beef (87) and gambling services, (88) amongst others, for domestic political reasons. A long as the member is willing to face potential retaliatory action, this is the end of the legal line as far as the WTO is concerned.

It does open interesting questions as to non-trade concerns in international trade law, which may be subject of research in law, but also political science. In China, we are faced with the problem that many of these issues are still very opaque, and that primary knowledge is lacking. Hence, detailed case studies about the relationships between domestic policymaking, interest groups, governance and international pressure are necessary to better understand the structures and processes driving Chinese behaviour. Also, and perhaps even more interesting, would be to place these Chinese issues in a comparative context, and analyse where and how Chinese practice resembles or diverges from practices in other nations, regions, cultures and political systems.

82. “Yingren reyi WTO dianging xieyi, shihengbianye haishi yuhuo chongsheng” [Film Persons Hotly Discuss WTO Film Agreement, A Field Littered with Corpses or a Rebirth after Trial By Fire?] Xinhua, 20 February 2012, http://www.gx.xinhua.org/newscenter/2012-02/20/content_24738159.htm [consulted on 6 March 2012].
83. See CMM Intelligence, China Film Co-Production Report: The Survivor’s Guide, March 2012.
84. It may not be a coincidence that DreamWorks was the first company to succeed in establishing a cartoon joint venture. The success of the DreamWorks film Kung Fu Panda caused some introspection in China, as it was felt that US enterprises were able to use Chinese memes and create a globally successful product, whereas China had succeeded in doing so. "Angle Xiongmaoz Zhi piaofang mubiao 6 yi, women weishenme paibuchu 'Abao'?” ["Kung Fu Panda 2" Box Office Objective 600 Million, Why Can’t We Film a “Po”?], Southern Metropolitan Daily, 28 May 2011, reprinted by Guangming Daily, http://e.gmw.cn/2011-05/28/content_2018274.htm [consulted on 6 March 2012].
86. DS160, US — Section 110(5) Copyright Act.

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