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**GLAWCAL  
COMMENT #173**

**IS CHINA DOING ITS BEST TO PRO-  
TECT WORKS AND TRADE**

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*Based on*

**Anselm Kamperman Sanders “Trade in  
Audiovisuals - The case of China”**



**gLAWcal**  
Global Law Initiatives for Sustainable Development

## A gLAWcal comment on Anselm Kamperman Sanders' "Trade in Audiovisuals - The case of China" in Paolo Davide Farah and Elena Cima (Eds.) "China's Influence on Non Trade Concerns in International Economic Law"

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An analysis of the trade of audiovisual products Protection of cultural diversity has long been a concern of European Union Member States. This is expressed in screen quotas and subsidies to support European audio-visual industries. The practice is often described as a covert way to maintain trade barriers to stem the dominant inflow of media products from the United States. The US has increasingly objected to these practices, and has made it an express issue in its trade negotiations with Korea. Europe, meanwhile, is committed to the protection of cultural diversity through its accession to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and finds itself in the opposite camp to the US on this issue. In this essay, Professor Sander analyzes how cultural products and their exchange has entailed and fostered a huge debate about the relevance of Non-Trade Concerns in the framework of free trade agreements and WTO laws and negotiation. Professor Sanders tackles this topic in a practical perspective, offering a real account of the framework in this area that could help both practitioners and scholars. On this matter, Professor Sanders focuses his attention mainly on China, and tell us how the WTO Appellate Body declared some Chinese laws and regulations of audio-visuals contrary both to the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). He then goes on to analyzing real cases. It is worth stressing here a legal case. The claim, brought under WTO by the U.S., concerned minimum copyright

standards, ex art. 4, Copyright Law of the People's Republic of China, which denied copyright protection to works not previously approved for circulation by the State Administration for Radio, Film and Television (SARFT). This causes not only domestic censorship - which is the most serious concern - but entailed also a quota of twenty foreign films allowed on the market per year. The fact here is that China - practically speaking - by denying copyright protection to a wide range of foreign works, was causing a growing demand of pirated products. Quite oddly, the judicial decision of the Panel claimed China's right not to deny copyright protection but - which is rather different - to suppress the distribution of copyright works on the basis of the Berne Convention, and therefore - in very practical terms - recognized the right of states to censor in general. These kind of disputes have both GATS and GATT elements. It is clear, however, how the real desire of China, beyond economy, is to exercise full political and cultural control over its media market. As a conclusion, protection of cultural diversity equally calls for policies ensuring that a plurality of cultural content is similarly safeguarded. So far, the results demonstrate visible "favouritism" for domestic state-controlled enterprises, where control over (online) distribution services and technologies seems to be the latest step to ensure that both economic and political authority remains in the hands of Chinese domestic and state-controlled entities. New disputes in relation to the control exercised over imports and distribution services, or even the technical fabric of dissemination of media that is favouring domestic players, seem inevitable. Given the intricate complexities of WTO law, it remains to be seen whether China's trading partners can take the Chinese policy cocktail to task and, if so, whether it leads to meaningful results.

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The gLAWcal comments are insight and short analytical pieces written by the gLAWcal team. The gLAWcal comments are based on, and inspired by, the books and chapters published within one of the [gLAWcal book series](#) published by Routledge Publishing (New York/London).

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gLAWcal is an independent non-profit research organization (think tank) that aims at providing a new focus on issues related to economic law, globalization and development, namely the relationship between international economy and trade, with special attention to a number of non-trade-related values and concerns. Through research and policy analysis, gLAWcal sheds a new light on issues such as good governance, human rights, right to water, rights to food, social, economic and cultural rights, labour rights, access to knowledge, public health, social welfare, consumer interests and animal welfare, climate change, energy, environmental protection and sustainable development, product safety, food safety and security.

## OUR MISSION

To collaborate with Government, Civil society and business community to balance the excess of globalization with Non Trade Concerns.

## OUR GOALS

To influence policymakers, to raise awareness over Non Trade Concerns, to encourage stakeholder participation, and to disseminate gLAWcal's publication results.



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