

**Mr Barroso
President
European Commission
B- 1049 Brussels**

Paris, April 4th, 2013

Dear Mr President,

On behalf of the European Coalitions for Cultural Diversity which gather the professional cultural organisations representing the whole spectrum of cultural professionals in thirteen European countries, I would like to express our strong concerns on the current version of the draft mandate of the European Commission relative to the Transatlantic Free Trade Agreement.

We deeply regret that, despite the opposition of three Commissioners, among them Commissioner Vassiliou, responsible for Culture and Education, the draft mandate was adopted without any unambiguously clear exclusion of the audiovisual and cultural sector.

Once again, as we did for the Protocol on Cultural Cooperation annexed to the EU-Korea Free Trade Agreement and for the Comprehensive and Economic Trade Agreement with Canada (CETA), we, as representatives of the European cultural and audiovisual sector, would like hereby to remind the European Commission of its politically binding commitment under International Law in favour of the protection and promotion of cultural diversity.

The European Commission signed and ratified in the name of the European Union the 2005 UNESCO Convention on the protection and promotion of cultural diversity. This international treaty is fully part of the European "acquis" and used as such by the European Court of Justice (cf. the 2009 UTECA case).

As provided for in article 1 g, one of its objectives is "*to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning*". Moreover, article 2.2 recognizes the "*sovereign right of the state parties to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory*". Finally, article 20.1 b) states that "*when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.*"

Moreover, the Treaty on the European Union has fully included more than twenty years ago, the cultural dimension by providing that "*The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.*" (art. 167.4 TFUE).

The legal commitment of the European Union under the 2005 UNESCO Convention and the Treaty could be totally broken if the European Union was to include the audiovisual and the cultural sector into the TAFTA negotiations.

Indeed, the usual method used by trade negotiators implies trade bargaining in all the sectors. Its effect is considerably strengthened when the negotiations are undertaken on the basis of negative lists, as it will certainly be the case with the United States, because the core principle is the liberalisation of each and every sector.

As Commissioner De Gucht knows perfectly well, the non-exclusion of the audiovisual and cultural sectors from the TAFTA results in the potential trade-off between these and other sectors. As a consequence, the existing European policies in favour of European cultural diversity will be threatened in substance.

This is the reason why the European Union struggled in favour of an exception to the trade rules named "cultural exception" twenty years ago, did not take any trade commitment in the audiovisual sector and developed specific funding programmes and regulatory measures in favour of the promotion of European works. And now, in the twenty-first century, the very capacity of European Member States to develop public policies promoting European cultural diversity in content on the Internet, connected TV and on all the future devices and technologies is at stake.

Whereas one of the key elements of the European Union strategy is the development of the digital economy, the stance of the European Commission on the draft mandate seems paradoxical to us. While the necessity to protect and promote cultural diversity is recognized verbally in the general aspects of the draft mandate, it remains unclear how the European Union will put this in practice. What is the European Union's ambition for its citizens? To enable them to use new technologies without offering them access to any European works and creations?

The European Coalitions for Cultural Diversity would like to be informed of the rationale behind the European Commission's decision with respect to the cultural audiovisual sector. Why are existing provisions, successfully and democratically established in the light of evidence from Europe's creative professionals and industries, now to be put in jeopardy?

If the argument is that the cultural and creative industries have, as every other sector, an economic potential and for this reason deserve to be integrated in the EU-US trade negotiations, then the answer is clear: The European audiovisual sector has nothing to gain from a TAFTA mainly because all the US existing discriminatory barriers were removed by the GATS and because the existing obstacles are the result of industrial and cultural patterns and thus cannot be addressed by a trade agreement.

Beyond the legal and economic aspects, the message expected by European citizens is a political one: is the European Commission able to ensure that the European identity and the cultural diversity which is one of its main assets, will be sustained and continue in the future? The political creditability of the European Union as the main promoter of the 2005-UNESCO Convention is at stake, including in its international cooperation dimension with emerging economies and developing countries.

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For all these reasons, we urge you, Mr President, to clearly articulate the European Union's political commitment to the agreements signed under International Law and to act in favour of the exclusion of the cultural and audiovisual sector from the EU-US trade and investment negotiations.

We hope you will take this letter into consideration and look forward to your reply on the specific points we have raised.

We remain, as ever, at your disposal should you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B Santschi', with a small dot at the end of the second name.

Beat Santschi
Vice President for Europe
International Federation of Coalitions for Cultural
Diversity

Cc :

Mr Michel Barnier, Commissioner for Internal Market and Services

Mr. Karel De Gucht, Commissioner for Trade

Mrs Androulla Vassiliou, Commissioner for Education, Culture, Multilingualism and Youth