**Trading Interests:
Trade Policy Consultations
with the Cultural Industries Sector**

by

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in partial fulfilment of
the requirements for the degree of

Doctor of Philosophy

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ABSTRACT

This dissertation seeks to account for the level and nature of private sector participation in deliberative consultations in the context of globalization and trade negotiations. The study hypothesizes that three main factors account for participatory outcomes in consultations: state behaviour respecting membership selection, resourcing, and the policy influence of the group, alternative channels of interest representation available to consultation participants, and reframing processes resulting from threats or opportunities in the international environment. The dissertation tests the hypotheses that state behaviour will materially affect the level of engagement and the nature of sector-governmental relations, that the availability of alternative channels will tend to condition the level of engagement where state behaviour proves unfavourable to participant interests, and that reframing processes will lead to collaborative (conflictual) intrasectoral relations where they serve to align (uncouple) member interests. The study empirically tests these hypotheses through a longitudinal qualitative case study of the federal government's Sectoral Advisory Group on International Trade in the cultural industries sector between 1985 and 1999. The empirical research examines three consultation periods: the consultations leading to the Canada-United States Free Trade Agreement, those prior to the North American Free Trade Agreement, and those preceding the Third Ministerial Conference of the World Trade Organization. The findings suggest that state behaviour (particularly membership selection and participants' perceptions of the degree of policy influence of the consultation group) and reframing processes exert a considerable influence on the level and nature of private sector engagement in deliberative consultations. Further, where consultation participants perceive a consultation is inimical to

their interests (especially in terms of the level of policy influence of the group), they will tend to seek recourse to alternative channels of interest representation. The dissertation illuminates some fundamental dynamics characterizing private sector engagement in deliberative trade policy consultations. It also contributes to scholarly inquiry respecting trade negotiation processes by broadening understandings of domestic-level consultations in the field of trade policy. The research could also serve as a useful point of departure for the study of deliberative consultations in other policy fields and with other consultation audiences.

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CHAPTER 1

INTRODUCTION

In Canada, the “cultural industries”, the creators, producers, and distributors of audio, audio-visual and print media, have long received shelter from the forces of international – especially American – competition through industrial and trade policy measures. Through Canadian content regulations, subsidies, foreign ownership restrictions, “carve-outs” in trade agreements, and a host of other policy measures, the Canadian state has sought to promote Canadians’ production of and access to domestic cultural content. And yet the relationship between trade policy-makers and the cultural community has been strained in recent years because of differences of perception, lack of trust, and mutual misunderstandings.¹ Indeed, in the trade policy consultations leading up to the Canada-United States Free Trade Agreement (CUSFTA), a federal trade negotiator described formal consultations with the cultural sector as a “succession of tantrums,” where cultural interests clashed with the federal government because of their ardent opposition to the free trade agreement.²

What generated this conflict between members of the cultural sector and the government in the CUSFTA consultations? How and why were the participants in the

¹ Dennis Browne, “Foreword,” in Dennis Browne, ed., *The Culture/Trade Quandary: Canada’s Policy Options* (Ottawa: Centre for Trade Policy and Law, 1998), vii.

² Gordon Ritchie, *Wrestling With the Elephant: The Inside Story of the Canada-US Trade Wars* (Toronto: Macfarlane, Walter & Ross, 1997), 216.

consultations, who Ritchie describes as an “amalgam of artists and business interests,”³ able to overcome their diversity to reach a unanimous position on free trade, and yet seemingly unable to collaborate with the federal government on the issue? These questions are all the more interesting when contrasted with subsequent trade policy consultations with the cultural industries. In the period leading up to the 1994 North American Free Trade Agreement (NAFTA), federal consultations proceeded without the fractiousness that characterized the CUSFTA period.⁴ Industry and government appear to have worked collaboratively during the NAFTA negotiations, achieving a high level of consensus at the consultative table. Moreover, in the mid- to late 1990s, federal trade consultations with the cultural industries sector appear to have been quite productive. Representatives of various sub-sectors of the industry collectively authored a report advising the federal government to adopt a new negotiating stance on the cultural industries in trade,⁵ and the federal government has since adopted the recommendations of the group.

What accounts for these differences in participant response to the consultations? Why was there such conflict between the cultural sector and the government in the consultative process in the mid-1980s, such apparent cooperation in the early 1990s, and the seemingly active efforts to advise the government in the late 1990s? What factors

³ Ibid, 216-217.

⁴ Maryse Robert, *Negotiating NAFTA: Explaining the Outcome in Culture, Textiles, Autos and Pharmaceuticals* (Toronto: University of Toronto Press, 2000), 89.

⁵ Cultural Industries Sectoral Advisory Group on International Trade, *Canadian Culture in a Global World: New Strategies for Culture and Trade* (Ottawa: Department of Foreign Affairs and International Trade, February 1999).

motivated members' level of participation and the nature of their interactions with each other and with the federal government? This dissertation seeks to answer these questions.

RESEARCH QUESTION: PARTICIPANT ENGAGEMENT IN DELIBERATIVE CONSULTATIONS

It is becoming increasingly important to strengthen both empirical and theoretical understandings of participant engagement in domestic consultation processes in the context of globalization. Contemporary analyses of globalization note the growing importance of close, continuous and collaborative consultation between the state and domestic interests. Researchers maintain that consultation constitutes a central means for nation states to respond to the challenges and adjust to the changes globalization brings about. In his introductory remarks to the findings and recommendations of a major national policy study examining the most significant trends affecting policy-making in Canada, William Coleman contends that a crucial factor influencing how well countries respond to globalizing processes is the nature of government relations with civil society actors. He warns governments that foregoing consultative relationships with domestic interests may imperil state capacity to facilitate national adjustment to the new global environment: "If governments eschew the cultivation of regularized, meaningful, consultation with representative and relatively democratic interest groups and social movements, they may also be reducing the likelihood of the country adjusting well to the changed global environment in which it is presently operating."⁶

⁶ William D. Coleman, "The Project on Trends: An Introduction," *Canadian Public Policy* 26, Special Supplement on The Trends Project (2000), S6.

In coming to this conclusion, Coleman draws on the research of domestic scholars participating in the above-noted study, as well as the work of Linda Weiss. Weiss argues that linkages between governments and economic sectors are fundamental to the capacity of states to respond to domestic industrial change resulting from changes in the international economy. She states, "Of central importance is the state's ability to use its autonomy to consult and to elicit consensus and cooperation from the private sector. ...through its linkages with key economic groupings, the state can extract and exchange vital information with producers, stimulate private-sector participation in key policy areas, and mobilize a greater level of industry collaboration in advancing national strategy."⁷

Coleman's insistence on the importance of regularized and meaningful consultation with non-state actors and Weiss' vision of a "catalytic" state, consulting the private sector to seek consensus, cooperation and collaboration make good theoretical sense. In a globalized policy-making milieu rife with uncertainty and rapid economic and social change,⁸ policy-makers face considerable informational requirements and the need for assistance in issue conceptualization and in the development of policy alternatives: "Any actors holding technical knowledge – whether these be expert committees of trade associations, large corporations, universities, private research institutes, or even trade

⁷ Linda Weiss, *The Myth of the Powerless State: Governing the Economy in a Global Era* (London: Policy Press, 1998), 39.

⁸ Coleman, "The Project on Trends," S4.

unions — have become potentially crucial participants in the policy process of any advanced capitalist economy.”⁹

These calls for more meaningful and regularized consultation with domestic interests find good company in the work of public consultation scholars. In a recent review of citizen involvement in policy processes, Phillips (with Orsini) identifies the problems associated with conventional methods of public consultation — “government controls the agenda and who is invited; information flows in one direction; and the process is episodic and *ad hoc*.”¹⁰ Like Coleman and Weiss, these researchers encourage more regularized, deliberative, and collaborative forms of consultation. Among their recommendations to improve the quality and quantity of interactions between government and citizens are such institutional mechanisms as civic forums. Civic forums are formal ongoing consultation structures composed of citizen representatives. They deliberate independently and in collaboration with the state on a range of policy issues, advising and collaborating with the state in public policy formation.

While these various appeals argue that sustained, deliberative consultation between the state and non-state actors constitutes a crucial activity in contemporary policy-making, there is scant theoretical or empirical research on the structure and functioning of such forms of consultation. Given the emphasis contemporary public

⁹ Michael M. Atkinson and William D. Coleman, “Policy Networks, Policy Communities and the Problems of Governance,” *Governance* 5, 2 (1992), 162.

policy scholarship places on regularized and deliberative forms of consultation, it is crucial to build on current understandings of participant engagement in such processes.

This dissertation seeks to contribute to the theoretical and empirical scholarship in this domain, in particular, by investigating factors accounting for the level and nature of participant engagement in deliberative consultations. The study's focus is on deliberative consultations in the context of globalization and trade liberalization, and it seeks to make a meaningful contribution to understandings of consultation processes in this context. Given the importance placed on deliberative processes in the broader scholarship on consultation, where possible, the research will seek to draw lessons from this case that contribute to this broader domain of inquiry.

The central research question of the dissertation is the following:

What accounts for the level and nature of private sector participation in deliberative consultation processes in the context of globalization and trade negotiations?

This study defines "consultation" in a manner consistent with Graham and Phillips' definition of "public participation" in their research addressing local government citizen consultation. It modifies their definition to recognize that the present research deals with industry and the federal government. In this study, consultation refers to "the deliberate and active engagement of [industry] by the [federal political] and/or

¹⁰ Susan D. Phillips with Michael Orsini, *Mapping the Links: Citizen Involvement in Policy Processes* (Ottawa: Canadian Policy Research Networks Discussion Paper No.

[bureaucratic] level – outside the electoral process – in making public-policy decisions or in setting strategic directions”.¹¹

The term “deliberative consultative processes” refers to those consultations that promote ongoing dialogue and deliberation about policy issues among and between state and non-state actors. The defining characteristic of deliberative consultation is its emphasis on deliberation – multiparty dialogue to advance public and private understanding of policy problems and to generate policy alternatives. In contrast to more traditional consultative exercises that limit participants to a one-way flow of information with the state (e.g., through letters, briefs, or oral presentations to government representatives), deliberative consultations involve two-way information flows. These flows take place both among participants and between participants and the state. When undertaking deliberative consultations, the state often selects a limited number of actors to participate. While the state’s role in membership selection is not necessarily a defining characteristic of deliberative consultation, as this dissertation reveals, it can be a crucial element of its application.

“Level” and “nature” of participation refer to two inter-related but distinct attributes of participation. The first, “level”, refers to the extent of participation of non-state actors in consultative processes. As the spectrum in Figure 1 below shows,

F[21, April 2002), iii., italics in original.

¹¹ Katherine A. Graham and Susan D. Phillips, eds., *Citizen Engagement: Lessons in Participation from Local Government* (Monograph of Canadian Public Administration – No. 22) (Toronto: Institute of Public Administration of Canada, 1998), 4.

participants can be actively engaged, passively engaged, or disengaged from consultations:

Figure 1: Level of Participation in Deliberative Consultation Processes

Active Engagement ----- *Passive Engagement* ----- *Disengagement*

Starting at the left-hand side of the spectrum, “active engagement” refers to the highest level of participant involvement in a consultation process. Here, participants attend consultative meetings, and actively partake in the deliberations of the group, representing their interests and lending their expertise to the workings of the group.

At the opposite end of the spectrum is “disengagement,” where participants exit a consultation process, discontinuing entirely their involvement in the group. As Bradford notes in a study of associative governance in the province of Ontario, in liberal polities, business can always exercise its option to “exit” partnership regimes.¹² That is, in deliberative consultations, participation is voluntary, and members are always able to depart the process if they choose.

“Exit” can refer not only to a physical withdrawal from the consultation (i.e., walking away from the table) but can also mean an implicit withdrawal, for example, by

¹² Neil Bradford, “Prospects for Associative Governance: Lessons from Ontario, Canada” *Politics and Society* 26 (4), 1998, 539-573. Bradford confines his remarks to the private sector, but consultation participants representing other sectors (e.g., the voluntary sector or labour groups) also possess the option of exiting deliberative forums.

attending consultation meetings but choosing not to actively participate in the deliberations (e.g., not revealing their opinions or sharing relevant information with the group). The middle of the spectrum in Figure 1 captures this passive form of involvement in consultations, “passive engagement.”¹³ Participants might choose an implicit rather than an explicit exit because they stand to benefit from attendance of consultative meetings even though they do not actively participate.

Rationales for passive engagement could include information acquisition, networking with other intra-sectoral representatives, or the use of continued participation as a delay tactic. With respect to the first, information acquisition, the Sectoral Advisory Group on International Trade¹⁴ on Agriculture currently functions in this manner. The participants in this deliberative consultation are somewhat mute in their advisory function, but attend the meetings in order to acquire government information that they can then individually put to strategic use to press for their preferred policy alternatives in encounters with government in other policy arenas.¹⁵ The second rationale, intra-sectoral networking, derives from an indirect benefit participants gain by attending consultations.

¹³ The study adopts the term “passive” engagement over alternatives such as “strategic” or “tactical” to recognize the range of rationales for which participants might adopt a passive stance in consultations, some of which may be strategic or tactical (for example, to gather intelligence as in the case of the Agricultural SAGIT discussed below), and others which may not be strategic, such as participants that do not actively participate because they feel that they lack the expertise to contribute to the discussions or because the subjects under discussion do not bear materially on their interests.

¹⁴ The empirical component of this study examines the Sectoral Advisory Groups on International Trade. The following section of this chapter briefly introduces the groups, while Chapters Two and Four detail the origins, structure and functioning of these deliberative consultations.

¹⁵ Personal interview with confidential and anonymous source, file no. 1314.

In a survey of industry participants in the federal government's 1978 Tier I/Tier II consultations (discussed below and in greater detail in Chapter Three), respondents cited "making new useful contacts" as one of the most productive outcomes of the process.¹⁶

The third potential rationale for passive engagement, continuing participation as a delay tactic, seemingly underpinned private sector actions in the Ontario government's Workplace Health and Safety Agency (WHSA). Bradford notes the "strategic disengagement" of business from the WHSA in the lead-up to the 1995 provincial election. Even though business representatives opposed the WHSA process, they continued to passively participate in the consultations because both opposition parties were committed to reforms that would ultimately abolish the WHSA. As the following chapters discuss, the findings of this study reveal additional rationales for passive engagement, including participant beliefs that they lack adequate expertise to contribute to the discussions, that they possess insufficient industry clout to voice views opposing those of the group, and that they do not have a direct stake in the topics under deliberation.

The second attribute of participation, "nature", pertains to the character of participant behaviour within a consultation. Unlike "level", which pertains primarily to individual responses to the exercise, the nature of participation speaks to the interactions

¹⁶ M.C. Baetz, "Business-government consultation at the industry sector level: to what extent is it productive?" in V.V. Murray, ed., *The Consultative Process in Business-Government Relations*. Edited proceedings of The Annual Conference on Business-

among participants and between participants and the government in the consultation. It seeks to capture the group dynamics of a consultative exercise. Do participants cooperate with one another, collaborating to discover common policy preferences and negotiating or coordinating their differences? Or do they choose to compete, each advancing their own individual or intra-sectoral interests? Are business-government relations in the consultations characterized by continual conflict? Or do business and government collaborate and seek consensus? These are the aspects the attribute "nature" seeks to capture.

It bears mentioning that the word "collaboration" as used in this study does not mean the absence of conflict. Rather, it means that parties work together to overcome differences and conflict where they exist. One of the key questions of this dissertation, then, is what factors promote collaboration amid conflict, i.e., when there is conflict between consultation participants and/or between consultation participants and the government, what factors encourage or discourage collaboration?

The study examines patterns of conflict and collaboration along two dimensions: at the intrasectoral level and at the sector-governmental level. At the intrasectoral level, it queries the nature of consultation dynamics between the sectoral representatives themselves. Specifically, is the predominant dynamic between consultation participants one of conflict or collaboration? Do participants work collaboratively to develop a

common position on the issues on which they deliberate, or is the dominant dynamic one of ongoing intrasectoral conflict? The second dimension studies conflict and collaboration between the consultation participants and the government. Sector-government relations may also be conflictual or collaborative. That is, they may tend toward either conflict or collaboration.

The level and nature of participation relate closely to one another because the nature of participation (collaboration or conflict) requires active levels of engagement of at least a core group of consultation members. If all participants disengaged from a consultation they would display neither conflictual nor collaborative behaviour by virtue of their physical absence from the consultative forum. Similarly, if all participants engaged passively, they would not be actively collaborating or visibly conflicting with one another or with the government.¹⁷ As such, an active level of engagement of at least a core group of participants is a condition of the “nature” of participation studied in this research. This is because if all participants disengage, the consultation breaks down and if all participants adopt a passive stance, the consultation implicitly breaks down.

¹⁷ Where participants use a deliberative forum as a means of acquiring information from the government, the sector could be said to “tacitly” collaborate in adopting this stance, and the sector-government dynamics could be described as “passive” collaboration in the sense that there is no visible conflict between the group and the government. This changes the meaning of collaboration used in this study, however, from active collaboration to address the policy issues giving rise to the consultation to tacit collaboration to use the consultation for purposes other than those intended. In this latter case, the consultation would more closely resemble a forum for the government to disseminate information to participants, rather than a forum for deliberative intrasectoral and sector-governmental discussions.

Intrasectoral and sector-governmental dynamics also bear a close relationship to one another in that collaborative sector-governmental relations require the presence of collaboration at the intrasectoral level. That is, when the sector is in conflict, it is unlikely to be capable of collaborating with the government. As such, this study assumes that a consultation will only exhibit sector-governmental collaboration in the presence of intrasectoral collaboration.

Figure 2 on the following page summarizes the preceding discussion of the level and nature of participation. The left-hand side of the figure illustrates the three levels of engagement examined in this research: active engagement, passive engagement and disengagement. Given that the nature of engagement or group dynamics of the consultation flow only from active levels of engagement, arrows leading to the next set of boxes in the diagram illustrating the nature of engagement emerge only from the active engagement box. As discussed above, the figure shows that when group members display active engagement, the dynamics of the group may be either conflictual or collaborative (the boxes marked intrasectoral conflict or intrasectoral collaboration, respectively). The arrows leading from these two boxes to the next set of boxes in the diagram illustrate that the nature of participation between the sector and the government can be either conflictual or collaborative, and, as explained above, sector-governmental collaboration occurs only where there is intrasectoral collaboration (as shown by the single arrow leading to the sector-governmental collaboration box from the intrasectoral collaboration box).

Figure 2: Level and Nature of Participation in Deliberative Consultation Processes

As explained above, this study seeks to account for both the level and the nature of participation in consultation processes. With respect to level, it seeks to identify the factors leading participants to actively engage in, passively engage in, or disengage from consultations. Regarding the nature of participation, it aims to account for conflictual versus collaborative group dynamics between members of the sector and between the sector and the government.

The following section briefly introduces the factors that this dissertation hypothesizes account for the level and nature of participation. The next chapter elaborates on these variables, positions them within the study's research framework, and introduces a number of working hypotheses respecting the impact of these variables on participant engagement.

Before moving to the next section, it is important to note that the term "private sector" merits a caveat as it pertains to this research study. Members of the Sectoral Advisory Groups on International Trade (the SAGITs), the deliberative consultation process investigated herein, hail predominantly from industry, but as the following chapters discuss, there is some representation from other sectors (labour, academe, and civil society) as well. In 1999, for example, the Cultural Industries SAGIT comprised 19 members: 15 from the private sector (individual companies and associations) and 4 from academia. Despite the inclusion of some members representing interests beyond those of the private sector, this study retains the term private sector to recognize that the

Department of Foreign Affairs and International Trade maintains that the SAGITs were established to provide “advice from the private sector to the Minister for International Trade.”¹⁸

ENGAGEMENT AND THE ROLE OF THE STATE, ALTERNATIVE CHANNELS AND REFRAMING PROCESSES

This research studies the impact of three factors on the level and nature of participant engagement in consultative exercises: (a) the role of the state in shaping the consultative process, (b) the effect of alternative channels through which groups can represent their interests and/or pursue their policy objectives, and (c) the impact of “reframing processes” on the willingness of participants in a consultation to collaborate with one another and with the state. While the following chapter describes these factors and positions them in the literature, each is briefly discussed below.

With respect to the first factor, the federal government’s sectoral trade policy consultations offer a fertile ground to investigate the impact of state behaviour on

¹⁸ Department of Foreign Affairs and International Trade, “Sectoral Advisory Groups on International Trade (SAGITs),” (one-page information sheet provided by the Trade Policy Consultations and Liaison Division of the Department of Foreign Affairs and International Trade, dated 22 September, 2000). The Mulroney government changed the name of the Department of External Affairs (DEA) to External Affairs and International Trade Canada (EAITC) in June 1989 and in November 1993, the Chrétien government renamed the organization the Department of Foreign Affairs and International Trade (DFAIT) (Kim Richard Nossal, *The Politics of Canadian Foreign Policy, Third Edition* (Scarborough: Prentice-Hall Canada, 1997), 247-248, 252). In this dissertation, references to the organization are time-sensitive. That is, references prior to June 1989 refer to the department as the Department of External Affairs, while those from June 1989 to November 1993 utilise the title it bore in that period (EAITC), and references from November 1993 forward utilise its name at the time of writing (DFAIT).

domestic engagement in consultations. In 1986, the Canadian federal government created the Sectoral Advisory Groups on International Trade to provide trade policy advice from the private sector to the Minister for International Trade. These advisory bodies exist largely in the same format today as they did at their inception. Senior business executives, with some representation from industry associations, labour, NGOs and academe are appointed on a non-remunerated basis for two-year renewable terms. They meet several times per year with bureaucratic and often ministerial attendance from the Department of Foreign Affairs and International Trade (DFAIT) for "an open exchange of ideas and information between the SAGIT members and government."¹⁹

The SAGITs' institutional continuity offers a unique opportunity to query the way in which state decisions and behaviour affect participant engagement in consultative exercises. That is, how have changes in the way the government operates the SAGITs – e.g., through the members it selects, the level of bureaucratic and/or financial support bestowed on the groups, or the level of policy influence of the SAGITs – affected SAGIT members' perceptions of and behaviour in the groups. In the pre-CUSFTA period, for example, it seems that some members of the Arts and Cultural Industries SAGIT were skeptical that the SAGIT would have much policy influence, because they believed that the free trade agreement would lead to the cancellation of safeguards for their industry.²⁰

¹⁹ Ibid.

²⁰ Helen Moroz, *The Changing Constellation of State-Societal Relations in Canada: A Case Study of the Domestic Consultations Leading to the Canada-U.S. Free Trade Agreement* (Unpublished PhD thesis, Kingston: Department of Political Studies, Queen's University, May 1996), 226.

This dissertation examines whether and how such skepticism affected participant engagement in the consultations.

The second factor shifts the analytical focus from the micro-level of the SAGITs themselves to the broader question of alternative forums at which and ways in which participants can represent their interests and pursue their policy objectives *outside* the consultative process. If participants can attempt to influence policy via other channels (e.g., by representing their interests at other bureaucratic, political, or legislative locales, by making representations to foreign governments, by joining transnational alliances, etc.), does this affect their engagement in a particular consultative process? If so, how? Similarly, if participants are able to pursue their objectives through private rather than public means (e.g., through industry standards setting or industry self-regulation), what is the effect of this capability on participant activity level in public consultations? Do participants forego participation in consultative initiatives because they can accomplish their objectives independent of the state?

The final factor further broadens the scope of analysis to investigate the potential of exogenous crises (or opportunities) in the policy environment to serve as “reframing processes” that alter actors’ perceptions of policy problems and their policy interests, and hence their willingness and capacity to cooperate within public consultations. The focus here is on threats and opportunities in the policy-making context and their effect on participant activity in consultations. Does the existence of threats or opportunities serve

to align the interests of policy actors in a consultation process, thereby promoting collaboration? Or do threats/opportunities uncouple or result in divergent interests among participants, thereby generating conflict in the consultation? This final factor examines the extent to which threats or opportunities in the international environment serve to promote unity (or dissent) between domestic actors and therefore increase (or decrease) their willingness to cooperate in consultative processes.

The cultural industries, for example, face the twin challenges of technological change and trade disputes.²¹ The first, technology, is altering both the industrial playing field for the cultural industries by introducing new industry players and by promoting convergence of previously distinct industry sectors. It is also compromising the traditional instruments of state policy-making in the sector as, for example, the Internet challenges Canadian content regulation and the protection of copyright. The second challenge is the growing list of trade disputes over Canadian cultural industries measures. As domestic cultural policies are struck down through trade rulings, new ways must be found to pursue national cultural policy objectives. This research investigates the extent to which international challenges or opportunities such as these act as catalysts that serve to reframe industry and government perceptions of the policy field and particularly their interests and relations within it, and hence their willingness to cooperate or tendency to conflict within consultative exercises.

²¹ Keith Acheson and Christopher Maule, *Much Ado About Culture: North American Trade Disputes* (Ann Arbor: The University of Michigan Press, 1999), 116.

OVERVIEW OF CHAPTERS

The dissertation proceeds in three sections. The first, comprising this chapter and the next, details the research question, research framework and methodology. This introductory chapter identified the research question, while Chapter Two delineates the dissertation's theoretical framework that focuses on globalization, consultation and nonstate actors. The second chapter also identifies the working hypotheses of the dissertation regarding the role of the state, alternative channels, and reframing processes and describes the research methodology (Appendix A further details the study methodology).

The second section of the dissertation, consisting of Chapters 3 and 4, examines the empirical context for the study. The topic of Chapter 3 is the Sectoral Advisory Groups on International Trade, the consultation mechanism forming the basis of the dissertation's empirical investigation. The chapter explores the origins of the SAGITs, their structure and functioning, as well as existing empirical research on the groups. Chapter 4 analyses cultural industries policy in Canada, and presents industry sector profiles for key cultural industries sectors. The chapter begins by examining cultural industries policy, noting the multiplicity of problems, objectives, and policy instruments pertaining to this policy domain. It continues by examining the changing context for cultural industries policy-making brought about by trade liberalization and technological change. The chapter then takes a closer look at policy for the various cultural industries sectors, and provides industry profiles of each of the sectors.

The dissertation's third section, Chapters 5, 6 and 7, presents the research findings of the study. Chapter 5 focuses on participant engagement in the Cultural Industries SAGIT during the Canada-United States Free Trade Agreement period, while Chapters 6 and 7 analyse SAGIT members' engagement in the consultations preceding the North American Free Trade Agreement and the Third World Trade Organization Ministerial in 1999, respectively. Each of the chapters begins by examining the key events and issues pertaining to the cultural industries during the period in question. The chapters then report the research findings on participant engagement in the SAGIT at that time period, linking the level and nature of participation to the dissertation's working hypotheses. Because negotiation outcomes in early periods inform the work of the SAGIT at subsequent periods, Chapters 5 and 6 depict negotiation outcomes for the CUSFTA and the NAFTA, respectively. Chapter 7 examines relevant national and international developments following the public release of the Cultural Industries SAGIT report, particularly the shift in the Canadian government's negotiating position on culture and trade, and the rise in transnational and interstate relations on cultural matters in recent times. The concluding chapter, Chapter 8, reviews the main findings of the dissertation, suggests potential avenues for further research, and notes some of the recent developments in both the SAGIT on the cultural industries, and the cultural industries and trade. To assist readers in following the complex sequence of events spanning the dissertation's fifteen year time period, Appendix B provides a timeline of SAGIT milestones, relevant trade negotiations, and key cultural trade disputes from 1985 to 1999.

CHAPTER 2

GLOBALIZATION, CONSULTATION AND NON-STATE ACTORS

INTRODUCTION

This chapter lays the research framework for the study. The first section expands on the introductory chapter's discussion of globalization, consultation and nonstate actors, positioning with greater precision the research question in the context of the literature. The chapter's second section delineates the research framework and working hypotheses. The third section describes the two-level approach to trade negotiations adopted in this study, while the fourth and final segment of the chapter provides an overview of the study methodology (Appendix A elaborates on the research methodology).

GLOBALIZATION, CONSULTATION AND NONSTATE ACTORS

This dissertation, in seeking to account for the level and nature of private sector participation in deliberative consultations, seeks to bridge a number of gaps in the literature on globalization, domestic public policy, and the nation state, as well as the literature on consultation. The sections below describe the main contributions.

Policy Globalization (Internationalization)

Doern, Pal and Tomlin draw a distinction between globalization and internationalization, maintaining that they are two separate, but related processes.¹ They

¹ G. Bruce Doern, Leslie A. Pal and Brian Tomlin, "The Internationalization of Canadian Public Policy," in G. Bruce Doern, Leslie A. Pal and Brian Tomlin, eds., *Border*

hold that globalization is a largely economic and technological phenomenon, driven by unprecedented developments in information and communications technology, international capital movements, expanded capacities for global production, and increasing ecological interdependence and environmental spillovers. Internationalization, meanwhile, is the process by which various aspects of policy or policy-making are influenced by factors outside national territorial boundaries. Internationalization can occur without globalization, and, in fact, precedes globalization in some policy fields. Globalization has only emerged within the past couple of decades, while many policy fields have been affected by international factors prior to the post-war period (e.g., trade policy and foreign policy). Globalization has served to intensify internationalization, expanding the latter process geographically and institutionally, as well as broadening the range of policy fields affected by non-domestic factors.

Given that the broader literature on globalization, the nation state and public policy often uses the terms internationalization and globalization interchangeably (i.e., some authors employ the term “globalization” in a manner consistent with Doern, Pal and Tomlin’s definition of “internationalization”), this dissertation uses the term “policy globalization” to refer to “internationalization” à la Doern, Pal and Tomlin.²

Crossings: The Internationalization of Canadian Public Policy (Toronto: Oxford University Press, 1996), 2-4.

² This study adopts the terms economic globalization and cultural globalization from Leslie A. Pal, *Beyond Policy Analysis: Public Issue Management in Turbulent Times*, 2nd edition, (Scarborough: Nelson, 2001), Chapter 2.

Contemporary analyses of policy globalization examine the changes to domestic policy-making that globalization intensifies. Scholars researching in this domain investigate, broadly speaking, the growing impact of globalization on institutions, interests and instruments in domestic policy-making processes. Globalization can affect institutions by, for example, increasing the importance of supranational institutions and interstate negotiations in domestic policy formation.³ In the realm of interests, it can bring new political pressures to bear on nation states, for example, through the political advocacy work of transnational or international civil society organizations.⁴ And with regard to instruments, globalization can result in the loss or weakening of policy instruments due to international trade agreements or economic integration.⁵

With respect to consultation, globalization alters the context for consultation in three important respects. First, it significantly affects the state. As a signatory to numerous international agreements, a nation state limits its sovereignty, constraining its

³ See, for example, G. Bruce Doern, "Towards an International Antitrust Authority? Key factors in the Internationalization of Competition Policy," *Governance* 9, 3 (1996), 265-286; D. Esty and R. Mendelsohn "Moving from National to International Environmental Policy," *Policy Sciences* 31, 3 (1998), 225-235, and D. Vogel, "The Globalization of Pharmaceutical Regulation," *Governance* 11, 1 (1998), 1-22.

⁴ See, for example, Steven Bernstein and Benjamin Cashore, "Globalization, Four Paths of Internationalization and Domestic Policy Change: The Case of Eco-Forestry in British Columbia, Canada," *Canadian Journal of Political Science* 33, 1 (2000), 67-99; R.M. Campbell and Leslie A. Pal, *The Real Worlds of Canadian Politics: Cases in Process & Policy*, 3rd ed. (Peterborough: Broadview Press, 1994), Chapter 4; S.J. Kobrin, "The MAI and the Clash of Globalizations," *Foreign Policy* 112 (1998), 97-109, and R. Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization* 52, 3 (1998), 613-644.

⁵ See, for example, Grace Skogstad, "Agricultural Policy," in Doern, Pal and Tomlin, *Border Crossings*, 145-166, and Linda Weiss, *The Myth of the Powerless State* (Cambridge: Polity Press, 1988).

use of certain policy instruments such as export subsidies, tariffs, and import quotas, and committing itself to specific policy objectives in fields such as environmental policy, human rights, and economic policy. Through international economic interdependence, globalization can also reduce the effectiveness of certain policy tools, such as fiscal and monetary policy.⁶ While this study focuses on the policy process rather than on policy outcomes or policy capacity *per se*, as noted in the introductory chapter, domestic consultation can contribute to state adaptive capacity in a globalized policy-making milieu. As such, this research also contributes to understandings of states' adaptive capabilities in response to globalization.⁷

⁶ Weiss, *The Myth of the Powerless State*.

⁷ Simeon argues that the reduction in sovereignty and policy effectiveness dramatically reduces the nation state's capacity to address policy problems (Richard Simeon, "Globalization and the Canadian nation state," in G. Bruce Doern and Bryne B. Purchase, eds., *Canada at Risk?: Canadian Public Policy in the 1990s*. (Toronto: C.D. Howe Institute, 1991), but this analysis confuses policy sovereignty with policy capacity. Doern and Tomlin distinguish between these two concepts (G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991), Chapter 11). Sovereignty, a legal concept, is the legal capacity of the nation state to make independent decisions. Policy capacity, meanwhile, refers to the combination of policy instruments at a nation's disposal, as well as its capacities for learning, interest mobilization, and consensus. In essence, policy capacity is a state's ability to solve its problems. Confusing policy capacity with sovereignty can lead to erroneous conclusions about the impact of globalization on the nation state. Although international agreements may abrogate the state's legal capacity for independent action (i.e., reduce its sovereignty), they may in fact *increase* the state's ability to effectively address the problems it confronts. For example, international trade agreements can restrict states from using certain policy instruments, but promote national economic growth through increased trade flows. In the same manner, international environmental accords decrease the sovereignty of each signatory but generate policy capacity for each party in the solution of common natural resource problems. In brief, international forces may constrain the nation state, but such limitations arise at the level of *policy instruments*, not at the level of *policy capacity* (Weiss, *The Myth of the Powerless State*, 197).

Second, globalization modifies the context for consultation by altering interest group politics and non-state actors' influence in the policy-making process. In the case of market actors such as exporters and importers, international price movements can generate predictable shifts in asset owners' policy preferences and hence alter coalition formation and rent-seeking behaviour.⁸ Globalization can also broaden the range of interests and coalitions around policy issues,⁹ catalyse the emergence of influential transnational relationships,¹⁰ and lead to the establishment of private regimes (governance frameworks for international commerce created and maintained by the private rather than the public sector).¹¹

Third, globalization can shift the locus of domestic policy-making from the national to the international level. This is perhaps demonstrated most markedly in the field of trade policy, where the focus of international trade negotiations has moved from "at the border" issues such as tariffs, import quotas, and valuation, to "behind the border" issues ranging from investment to health and safety standards to intellectual property

⁸ Jeffrey A. Frieden and Ronald Rogowski, "The Impact of the International Economy on National Policies: An Analytical Overview," in Robert O. Keohane and Helen V. Milner, eds., *Internationalization and Domestic Politics*. (New York: Cambridge University Press, 1996), 25-47.

⁹ Doern, Pal and Tomlin, *Border Crossings*, 9-12.

¹⁰ Michael M. Atkinson and William D. Coleman, "Policy Networks, Policy Communities and the Problems of Governance," *Governance* 5, 2 (1992), 154-180.

¹¹ See A. Claire Cutler, Virginia Haufler, and Tony Porter, eds., *Private Authority and International Affairs*. (Albany: State University of New York Press, 1999); Karsten Ronit and Volker Schneider, "Global Governance Through Private Organizations" *Governance* 12 (3), 1999, 243-266; and Debora L. Spar, "Lost in (Cyber)space: The Private Rules of Online Commerce", pp. 31-51 in Cutler, Haufler and Porter, *Private Authority and International Affairs*.

rights.¹² Concomitant with this move is a shift in the locus of domestic policy formation from the national to the international arena. This can imply substantive changes in the policy process, as the dynamics of policy formation differ in domestic versus international forums. International policy-making tends to be rule-oriented, technical, and concerned with bureaucratic procedure, information handling, and issue management.¹³

In this globalized policy-making milieu, private stakeholder consultation acquires a central position in domestic policy formation. As Haas notes, uncertainty proliferates in contemporary policy-making as a result of "...the increasingly complex and technical nature of the ever-widening range of issues considered on the international agenda, including monetary, macroeconomic, technological, environmental, health, and population issues; the growth in complexity of the international political system in terms of the number of actors and the extent of interactions; and the expansion of the global economy and the modern administrative state."¹⁴ These issues confront policy-makers with considerable informational requirements and the need for assistance in issue conceptualization and the development of policy alternatives. As noted in the previous chapter, "Any actors holding technical knowledge – whether these be expert committees of trade associations, large corporations, universities, private research institutes, or even

¹² G. Bruce Doern and Brian Tomlin, "Trade-Industrial Policy," in Doern, Pal, and Tomlin, *Border Crossings*, 167-187.

¹³ Atkinson and Coleman, "Policy Networks."

¹⁴ Peter M. Haas, "Introduction: Epistemic Communities and International Policy Coordination" in Peter M. Haas, ed., *Knowledge, Power, and International Policy Coordination* (Columbia: University of South Carolina Press, 1992), 12.

trade unions – have become potentially crucial participants in the policy process of any advanced capitalist economy.”¹⁵

But despite the “new” context for consultation brought about by globalization, and the increasing importance of consultation to contemporary domestic policy-making, there has been relatively little research in this vein. In fact, the paucity of research in this area is but symptomatic of the limited amount of research undertaken on globalization’s impact on domestic policy processes writ large. Skogstad notes the “abundance of conflicting propositions, alongside the still-limited empirical analyses” on “globalization and regionalization, and their consequences for Canadian public policy.”¹⁶ This study contributes to this research agenda both theoretically and empirically by studying the behavior of domestic policy actors in domestic policy consultations in a globalized policy environment.

Moreover, this dissertation furthers our understanding of the impact of globalization on domestic policy processes. After surveying the existing literature on globalization, Skogstad suggests several lines of inquiry, including “the political dimension of globalization and its implications for domestic policy making.”¹⁷ In this line of inquiry, she includes weakening assumptions about the priority of the domestic policy-making arena and the role of transnational networks – both of which this study

¹⁵ Atkinson and Coleman, “Policy Networks,” 162.

¹⁶ Grace Skogstad, “Globalization and Public Policy: Situating Canadian Analyses,” *Canadian Journal of Political Science* 33, 4 (2000), 825.

¹⁷ *Ibid*, 827.

seeks to address theoretically and empirically. Skogstad writes, “With the emergence of sites and modes of policy making that extend beyond public authorities to embrace private actors, and trespass the local and supranational spheres, domestic policy analysts must train their sights beyond Canada’s borders to an unprecedented extent.”¹⁸ This research sets its sights beyond Canadian borders by examining the impact of a number of factors of globalization on industry participation in domestic consultations. Through the variable “alternative channels”, the study examines the impact of international channels (whether public or private) on private sector participation in domestic consultations. In addition, the hypotheses regarding “reframing processes”, seek to identify the impact of forces commonly associated with globalization – such as trade liberalization and technological change – on corporate behaviour in consultations.

Consultation

Consultation has acquired an increasingly important role in the public policy process in recent years, spurred on by a range of factors, including growing public expectations for involvement in the policy process, the increasing complexity of policy problems outstripping the government’s capacity to resolve them on its own, trends toward more horizontal governance models and a more empowered civil society, as well as developments in communications technologies that have created new means for nonstate actors to become involved in policy-making.¹⁹

¹⁸ Ibid.

¹⁹ Susan D. Phillips with Michael Orsini, *Mapping the Links: Citizen Involvement in Policy Processes* (Ottawa: Canadian Policy Research Networks Discussion Paper No. F|21, April 2002), 4-8; and Peter Sterne with Sandra Zagon, *Public Consultation Guide:*

While a range of rationales for consultation can be identified, the primary objective of the practice is generally to improve both the design and implementation of public policy through such activities and outcomes as information-sharing and exchanges of views between the government and consultation participants (and in deliberative consultations, amongst participants), greater public support for policy initiatives and improvements at the implementation stage because nonstate actors have been involved in

Changing the Relationship Between Government and Canadians, Management Practices No. 19 (Ottawa: Canadian Centre for Management Development, May 1997), 1. Scholars examining consultation often appear to engage in endless definitional exercises, taking great pains to differentiate between various terms – some in fashion and some not so in fashion – to refer to nonstate actors' involvement in the policy process. These terms include consultation, participation, and engagement, and the putative distinctions between them occur along both content and process dimensions. Consultation generally refers to a more limited form of involvement of nonstate actors in policy, focusing on "the ongoing development and management of the policy or program in question, not the establishment of parameters for political discussion and debate." (Pal, *Beyond Policy Analysis*, 259). It is characterized as a "state-centred" activity, predominated by one-way information flows, either from participants to the government or from the government to participants with little in the way of deliberation (Phillips, with Orsini, *Mapping the Links*, 3). Participation, meanwhile, shares with consultation the lack of two-way information exchange on the process side and on the content side originated in and is associated with the field of urban planning (Katherine A. Graham and Susan D. Phillips, eds., *Citizen Engagement: Lessons in Participation from Local Government* (Monograph of Canadian Public Administration – No. 22) (Toronto: Institute of Public Administration of Canada, 1998), 238 and Phillips with Orsini, *Mapping the Links*, 1). Engagement, for its part, appears to be the most recent term in vogue, and refers to a legitimate two-way dialogue among participants and between participants and the government, that includes discussion of values underpinning policy (Phillips with Orsini, *Mapping the Links*, 3; Pal, *Beyond Policy Analysis*, 258). This dissertation does not seek to enter this definitional fray, which seems primarily concerned with devising new terms to paper over and begin anew following the accumulation of negative experiences and negative connotations on the part of consultation participants. Rather than contribute to the proliferation of existing terms, this study uses the term "consultation" throughout, recognizing that individual consultation exercises will differ as to their content and process and can be clearly described along these dimensions rather than by developing new terms. As noted in Chapter 1, this study examines private sector consultation at the federal level, defining it as "the deliberate and active engagement of industry by the federal political and/or

policy development, as well as more general benefits such as improved mutual understanding between government and its various publics, opportunities for active citizenship and community capacity building where the government holds consultations with the general public, and improving the openness, transparency and democratic legitimacy of the policy process.²⁰

To be sure, there are limits and challenges to consultation. In the context of business-government consultations, as discussed in the following paragraphs and elaborated further in Chapter 4, participant perceptions, political institutions, and the structure of Canada's system of private sector interest representation can challenge the conduct of business-government consultations at the federal level in Canada.²¹

The literature on public consultation offers useful taxonomies for and approaches to the design, execution, and evaluation of consultative exercises, but provides less theoretical guidance concerning the impact of these structural and procedural decisions on the level and nature of participant engagement in consultative initiatives. Identifying

bureaucratic level – outside the electoral process – in making public-policy decisions or in setting strategic directions”.

²⁰ Phillips with Orsini, *Mapping the Links*, 8-9 and Pal, *Beyond Policy Analysis*, 259

²¹ In addition, as Stairs notes, where consultation participants seek to engage public servants in discussions respecting the fundamental principles and values underpinning policy, as opposed to providing input *within* an existing policy framework, this can fundamentally challenge Canada's system of parliamentary democracy, where the legitimate political authority to make these basic policy choices rests with Ministers and Parliament, not with the public service. (Denis Stairs, “Foreign Policy Consultations in a Globalizing World: The Case of Canada, the WTO, and the Shenanigans in Seattle,” *Policy Matters*, Vol. 1, no. 8, (Montreal: Institute for Research on Public Policy, December 2000).

the causal factors underlying participant behaviour within consultations is not only theoretically valuable, but also of direct practical import to domestic consultation in Canada. At the national level, private sector consultation has not traditionally been the Canadian state's forte. As James Gillies states in his prefatory remarks to an edited volume on the consultative process in government business relations, "The fact is that after more than one hundred years of efforts the attitudes and institutions for effective consultation between business and government do not exist in Canada."²²

Government-business relations scholars advance a number of reasons for this state of affairs. Scholars researching in the interpretive approach to business-government relations hypothesize that subjective interpretations of reality can significantly affect the outcome of business-government consultative processes. Empirical investigations appear to support this hypothesis. Taylor demonstrates that differences in personal values, attitudes, beliefs, and perceptions between private and public actors correlate positively with their perceptions of business-government relations.²³ Institutional approaches to state-market consultation suggest that federalism erects significant barriers to the consultative process in Canada.²⁴ The fragmentation of economic policy-making

²² James M. Gillies, "Preface" to James M. Gillies and Victor V. Murray, eds., *The Consultative Process in Business-Government Relations*. Edited proceedings of The Annual Conference on Business-Government Relations in the Max Bell Programme for Business-Government Studies. (Ontario: York University, 1986), 2.

²³ D. Wayne Taylor, "An Interpretative Approach to Understanding and Improving Business-Government Relations," *Canadian Journal of Administrative Science* 4, 4 (1987), 353-366.

²⁴ Keith G. Banting, "The State and Economic Interests: An Introduction," in Keith G. Banting, ed., *The State and Economic Interests*, Royal Commission on the Economic

authority inherent in a federal state makes it difficult for negotiations between the federal government and economic interests to take place. Any comprehensive agreement would require the participation and agreement of the provinces, which, in light of the history of Canada's federal-provincial conferences, can erect considerable hurdles.

Finally, research examining the political behaviour of the private sector proposes that obstacles to collective action underpin the difficulties the Canadian state encounters in consulting industry.²⁵ The divergence of business interests along regional, sectoral, and intra-industry lines creates a constellation of private sector associations that is fragmented, pluralistic, and competitive. As a result, there are few peak associations that can coordinate and consolidate the national interests of market actors on broader issues such as macroeconomic policy or economic adjustment, challenging the conduct of consultative exercises.

The present research study seeks to improve understanding of industry behaviour within consultative processes by examining the role of the state, alternative channels, and reframing processes on participation. The focus on the role of the state helps address the gap in the public consultation literature regarding the impact of structural and procedural factors on participation, while the variables "alternative channels" and "reframing

Union and Development Prospects for Canada Vol. 32 (Ottawa: Supply and Services, 1986), 1-33.

²⁵ William D. Coleman, *Business and Politics: A Study of Collective Action*. (Kingston: McGill-Queen's University Press, 1988).

processes” expand the repertoire of possible factors that are causally related to participation in consultations.

PARTICIPANT ENGAGEMENT IN CONSULTATION PROCESSES: THE ROLE OF THE STATE, ALTERNATIVE CHANNELS, AND REFRAMING PROCESSES

Canadian models of interest representation operate largely within the pluralist tradition, focusing on the voluntary, competitive, and unorchestrated involvement of pressure groups in the policy process.²⁶ While these models -- especially the concept of policy communities²⁷ -- are useful tools to study the policy-making process in particular policy fields or sectors, this literature may not be capable on its own of addressing the research question posed above. This is because in a deliberative consultation like the SAGITs, involvement in many important respects is not pluralistic: it is not voluntary, competitive, or unorchestrated. The state determines who the “volunteers” will be, puts a cap on competition by implicitly according participants a monopoly on interest representation within the consultative body, and orchestrates in large measure the nature of participants’ involvement with the state (e.g., how often the group meets, where it meets, with whom it meets, etc.).

In this sense, the dynamics of a deliberative consultative process may be better illuminated through one of pluralism’s counterparts, corporatism. In corporatist models

²⁶ Paul Pross, *Group Politics and Public Policy*, 2nd ed. (Toronto: Oxford University Press, 1992).

²⁷ See William D. Coleman and Grace Skogstad, eds., *Policy Communities and Public Policy in Canada: A Structural Approach* (Mississauga: Copp Clark Pitman, 1990).

of interest representation, the state determines group participation in policy development and implementation. Schmitter defines corporatism as "a system of interest representation in which the constituent units are organized into a limited number of single, compulsory, non-competitive, hierarchically ordered and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and support."²⁸ Corporatism, therefore, refers to a highly structured set of binding relationships between the state and societal interests, where key non-state actors have a state-granted monopoly to represent the interests of their members in exchange for compliance with public regulation of their behaviour.

Clearly, deliberative consultative processes do not represent this ideal-type. However, they do bear a keen resemblance to corporatism in a number of crucial respects. In a deliberative consultation, the state controls important aspects of the group-state relationship: it selects the members, it defines the group's terms of reference, it controls the level of financial, bureaucratic and other resources accorded to the group, and it determines in large measure the way in which the group interacts with the state.

But despite this resemblance to corporatist models of interest representation, deliberative consultations take place in a pluralistic political environment. In a pluralist

²⁸ Phillippe C. Schmitter, "Still the Century of Corporatism?" in Philippe C. Schmitter and Gerhard Lehmbruch, eds., *Trends Toward Corporatist Intermediation*. (London:

system, as Pross explains, groups can pursue their policy preferences in a variety of ways both within the policy community (e.g., by influencing the executive, the lead agency, the sub-government and the attentive public) and beyond the policy community (e.g., by influencing public opinion).²⁹ The central implication of this distinction is that even though a deliberative consultation may bear corporatist features, in a pluralist system, participants ultimately have recourse to other means of pursuing their policy objectives. That is, the deliberative channel is not the sole access point or sole means by which private actors can pursue their policy objectives. Participants are not bound to a single forum as they would be in a true corporatist arrangement. They have recourse to alternative channels, actors, and strategies in the domestic policy community, but also, increasingly, as a result of globalization, groups have recourse to alternative access points and pressure group tactics beyond domestic borders.³⁰ And as discussed below, for some issues, private actors can bypass the public policy process entirely through the creation of private regimes.³¹

It is not this study's aim to suggest that deliberative consultations or the SAGITs signal the emergence of corporatism in Canada. Canadian approaches to group-state relations reside largely in the pluralist tradition and Canadian scholars have been quick to

SAGE Publications, 1979), 13.

²⁹ Pross, *Group Politics and Public Policy*.

³⁰ See Thomas Risse-Kappan, ed., *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and International Institutions*. (Cambridge: Cambridge University Press, 1995) and Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*. (Ithaca: Cornell University Press, 1998).

³¹ Cutler, Haufler, and Porter, *Private Authority and International Affairs*.

point out that group-state relations in Canada are not corporatist.³² Moreover, traditional corporatism involves tripartite decision-making between the state, business and labour, whereas the SAGIT mechanism seeks primarily private sector input into the policy process. The purpose of drawing attention to the quasi-corporatist features of deliberative consultations is to assist in accounting for the behaviour of participants in consultative processes. This seeks to highlight a potentially central determinant of participant behaviour in deliberative consultations: while the state has control over the structural characteristics of the consultation (the corporatist element), participation in the process is ultimately voluntary (the pluralist context). Participants can “exit” the process in favour of other means of pursuing their objectives. One of the key objectives of this research study, therefore, is to identify the variables that prompt exit (disengagement or passive engagement) or promote participation (active engagement) in deliberative consultations. The following section identifies the study’s working hypotheses in this regard.

Working Hypotheses

This dissertation examines three hypotheses (explained in full below but previewed briefly here). First, it theorizes that the organizational features of a deliberative consultation process impact the level and nature of participation. The study investigates the hypothesis that state decisions regarding such factors as membership, resource allocation, and group terms of reference, have an impact on participant

³² Leo Panitch, “Corporatism in Canada?” in Richard Schultz, Orest M. Kruhlak, and John C. Terry, eds., *The Canadian Political Process* (Toronto: Holt, Rinehart and

engagement in the process. Where these decisions are favourable (inimical) to participant interests, consultation members are more likely to actively engage (disengage) from the process, and the consultation is more likely to display collaborative (conflictual) sector-governmental dynamics. Second, the research conjectures that the existence of other channels for and means of pursuing policy objectives is an important factor in accounting for participant engagement. Where participants believe there are few (many) alternative channels through which to pursue their policy objectives, they are more likely to actively engage in (disengage from) the consultation. As described below, however, where state behaviour is favourable to the interests of consultation participants, they may actively engage in the consultations despite the presence of many alternative channels.

Third, the study explores the hypothesis that “reframing processes” associated with globalization impact the nature of participation. By presenting common threats or opportunities to consultation group members, globalization may prompt domestic actors to reframe their traditional conceptions of policy problems and hence alter the patterns of conflict and collaboration within a consultation. At the intrasectoral level, the dissertation hypothesizes that reframing processes lead to collaborative (conflictual) dynamics between consultation participants where common threats or opportunities serve to align (uncouple) the interests of group members. Between the government and the sector, the study hypothesizes that state behaviour will condition the influence of reframing processes on sector-governmental relations. Where participants perceive state behaviour as favourable (inimical) to their interests, the consultation will exhibit

collaborative (conflictual) sector-governmental dynamics. The sections below elaborate further on each of these working hypotheses and summarize them together in graphical format.

(i) The Role of the State

“The operation of a particular SAGIT all depended on how DFAIT “worked” the SAGITs – the members it selected, how active the bureaucrat assigned to each SAGIT was, and how the Minister interacted with the groups.”³³

Recognizing the quasi-corporatist elements of a deliberative consultation highlights the importance of state decisions regarding the structure and functioning of the consultative channel of representation. This insight is not new to public consultation scholars. The literature on public consultation and engagement, although focused primarily on the participation of citizens and citizen groups in policy-making, underscores the importance of organizational and procedural factors to consultation. The key themes and questions of the literature are the when, why, who, and what of public participation.³⁴ The literature suggests that consultation requires that the state have adequate time and resources, as well as attitudinal and institutional preparedness. In addition, consulted stakeholders must also be prepared, and an important component of this is their need to be informed about the policy issues at hand. On the procedural side, the literature highlights the importance of defining and targeting the audience for consultation, the need for both state and non-state actors to have a clear understanding of

³³ Interview 1314.

³⁴ Graham and Phillips, *Citizen Engagement*, 7-10.

the goals and expectations of the consultation, and the significance of selecting the appropriate consultative technique or method.

But while this literature provides useful taxonomies for and approaches to the design, execution, and evaluation of consultative exercises,³⁵ it offers less theoretical guidance regarding how these structural and procedural decisions affect the level and nature of participant engagement in consultations. This dissertation seeks to bridge this theoretical gap. It draws on the literature on policy communities and policy networks, which focuses attention on an integral feature of consultation processes: consultation takes place in the context of existing relationships between and among state and nonstate actors. While a consultation may be an important -- even pivotal -- event in the life of a policy network, it is rarely the network's progenitor. Rather, it is an exercise that occurs in an existing network milieu, and as such, is conditioned by extant relations between and among public and private actors.

Policy networks are "more or less stable patterns of social relations between interdependent actors, which take shape around policy problems and/or policy programmes. Policy networks form the context in which policy processes take place."³⁶ Two of the main themes in recent policy network scholarship are the state's role and

³⁵ For a useful guide, see Sterne with Zagon, *Public Consultation Guide*.

³⁶ E.-H. Klijn. "Policy Networks: An Overview", in Walter J.M. Kickert, Eric-Hans Klijn and Joop F.M. Koppenjan, eds., *Managing Complex Networks: Strategies for the Public Sector* (London: Sage, 1997), 14.

capacity to manage and restructure networks.³⁷ Network management involves government attempts to change relations among actors in the network, while network restructuring refers to changing the number of actors in a network.

A deliberative consultative process represents a potentially powerful tool for network management and restructuring because it confers a considerable degree of control to the state over a channel of interest representation. Indeed, de Bruijn and ten Heuvelhof cite the use of advisory bodies as an important conduit for network management and restructuring.³⁸ Through judicious and strategic membership selection, resource allocation, and delegated authority, the state can attempt to reconfigure the network relations among actors both within and outside the consultative process. In its widest sense, the government can endeavour to manage or restructure an entire policy network through a deliberative consultation, or in a more modest manner, it can, for instance, seek to manage or restructure its relations with specific actors in a network.³⁹ It can strive to increase (decrease) its interactions with particular network actors by, for example, appointing (not appointing) them to the consultative body, it can strive to add (eliminate) certain actors from the network by increasing (decreasing) funding to the consultative exercise, or it can catalyze (challenge) cooperative relations with network actors by increasing (withdrawing) government attention to the group.

³⁷ John A. de Bruijn and Ernst F. ten Heuvelhof, "Policy Networks and Governance," in David L. Weimer, ed., *Institutional Design* (Boston: Kluwer, 1995).

³⁸ Ibid, 174.

³⁹ State behaviour need not be strategic in order to have network management and restructuring consequences, i.e., state actions can impact a network whether or not the state set out intentionally to affect it.

Dowding criticizes policy network analysis for failing to account for policy outcomes.⁴⁰ While this is without doubt a serious limitation of the approach, there is a further weakness in the literature that is perhaps equally significant. This limitation derives from the literature's implicit assumption of naïveté and complacency on the part of non-state network actors in response to "strategic governance" (network management and restructuring strategies by the state). If the state is trying to change the relations among actors in a network or the number of actors in a network, is it reasonable to assume that non-state actors will fail to notice or fail to react to this tactic? This dissertation hypothesizes that it is not.

There is a limit to how purposively manipulative the state can be in designing consultative processes: where policy actors view state decisions respecting the structure and functioning of a consultative channel as inimical to their interests, they will not sit idly by. They will react to these tactics. Specifically, this study proposes that state decisions regarding the structure and functioning of a deliberative consultative process will affect both the level and nature of participation in the exercise. The research examines three state-determined features of the consultative process: membership, resources, and policy influence of the group.

Membership. In deliberative consultations, the state controls which network actors will have access to the channel of representation. Through membership selection,

⁴⁰ Keith Dowding, "Model or Metaphor? A Critical Review of the Policy Network Approach," *Political Studies* 43, 1995, 136-158.

the state can intentionally (or unintentionally) condition the level and nature of participation. For example, the selection of members with considerable expertise and/or interest in the consultations' subject area could be expected to yield higher levels of participation as these individuals would possess knowledge relevant to the consultations and/or a considerable stake in the policy area under consultation. Conversely, the appointment of members possessing limited expertise in the consultations' subject area and limited direct interest in the policy area could be expected to yield lower levels of participation, as these members would be ill-positioned to provide substantive advice.

Moreover, membership selection may foster participation by restructuring or managing the policy network to the benefit of participants. For example, the introductory chapter noted Baetz' survey of industry participants in the federal government's 1978 Tier I/Tier II consultations, where respondents cited "making new useful contacts" as one of the most productive outcomes of the process.⁴¹ The interest of participants in the "networking" component of the consultations suggests that other factors beyond influencing policy outcomes and exchanging information with the state can foster private stakeholder engagement in consultative initiatives.

Membership selection can also shape the nature of participation. The selection of members with sharply divergent interests may yield conflictual dynamics in the group

⁴¹ M.C. Baetz, "Business-government consultation at the industry sector level: to what extent is it productive?" in V.V. Murray, ed., *The Consultative Process in Business-Government Relations*. Edited proceedings of The Annual Conference on Business-

whereas a consultation process consisting of members sharing similar interests would likely demonstrate less conflict. Membership selection will also condition sector-government relations. Where the interests of members are at odds with broad policy directions of the government, sector-government conflict is more apt to occur. In the case of trade policy consultations, for example, appointing consultation participants ideologically opposed to trade liberalization would likely yield conflictual sector-government dynamics.

Resources. The state's control over the structure and functioning of a deliberative consultation derives not only from its role in membership selection, but also from its decisions regarding the resourcing of the group. The level of financial and bureaucratic resources allocated to the consultation process and to participants in the process may influence the level of participation, by facilitating or challenging the activities of the group as a whole and of its constituent members. Financial resources include, for example, remunerating members or reimbursing them for expenses incurred to participate in consultations. This could include the payment of per diem or honoraria for time spent in consultations, as well as reimbursement of travel expenses to attend group meetings. Financial resourcing also pertains to budgetary support for the activities of the group, such as funding to undertake research studies.

The bureaucratic support to a consultation process involves such resources as the provision of secretariat services to assist with coordinating group meetings, developing meeting agendas and maintaining a written record of group proceedings. Bureaucratic resources also include information and research services, for example, providing relevant information to the group's deliberations, and researching and writing reports for the consultation body.

This study hypothesizes that higher levels of resources will promote higher levels of engagement by facilitating participation in the consultation. That is, where consultation participants do not have to expend as much of their own resources and time to participate, they are more likely to actively engage in the process. Conversely, if the state allocates less financial and bureaucratic support to the group, it is more likely that members will disengage from the process as the cost of participating (e.g., airfare, secretariat services, research activities, etc.) and the information required to participate (e.g., information relevant to group deliberations) discourage active participation.

Policy Influence. In a deliberative consultation, participants may exit the process if they perceive that the state is attempting to restructure or manage the policy network in a fashion inimical to their interests. Where members perceive the consultative process is a means of legitimizing predetermined policy directions, for example, participants may withdraw from the process. Indeed, Jenson and Papillon identify the use of consultation as legitimization as one of the main downsides of public consultation: "...there is a risk

that citizens will find [community-level consultation] processes to be a mere exercise of public relations. This is a valid concern since there is no mechanism to guarantee the real impact of these consultations in the decision-making process.”⁴²

While Jenson and Papillon direct their remarks to community-level consultations, the risk they identify applies equally to deliberative consultations with the private sector. There is no mechanism to guarantee the impact of these consultations in the policy process – nor, arguably should there be when consultations take place in a representative democracy – and this creates the possibility that a consultative forum may wield little or no policy influence or may represent a government attempt to coopt the sector to a predetermined policy trajectory. This dissertation hypothesizes that where participants believe this to be the case, they may disengage from the process, finding the state’s behaviour in the consultation detrimental to their interests. Conversely, where participants perceive that the consultation process possesses (or potentially possesses) a desirable degree of policy influence, they will more likely become and remain actively engaged in the process.

⁴² Jane Jenson and Martin Papillon, “The Changing Boundaries of Citizenship: A Review and a Research Agenda”, pp. 1-51 in *Modernizing Governance: A Preliminary Exploration*. Articles Presented at the Canadian Centre for Management Development’s International Conference on Modernizing Governance held in Ottawa in May 2000. (Ottawa: Canadian Centre for Management Development, 2000), 37.

(ii) Alternative Channels

*"You'd be wrong if you thought the SAGITs were the only place industry can try to influence trade policy."*⁴³

This research examines the hypothesis that the presence of alternative channels for pursuit or attainment of policy objectives beyond the deliberative consultation channel will impact the extent of participation in deliberative consultations. Alternative channels can be public or private, and domestic or international. The two-by-two table below presents the range of alternative channels through which policy actors may pursue their goals in a globalized policy-making milieu (public versus private / domestic versus international). The paragraphs following discuss each of the four channels in the table.

Table 1: Typology of Alternative Channels for Interest Representation

	Public Channel	Private Channel
Domestic Channel	<i>Public-domestic channel</i>	<i>Private-domestic channel</i>
International Channel	<i>Public-international channel</i>	<i>Private-international channel</i>

Beginning in the second column with public-domestic channels, where nonstate actors believe they can more effectively further their interests in the domestic policy context either within or beyond the policy community (e.g., by influencing the executive, lead agency, sub-government, attentive public, or influencing public opinion), they may exit the consultative process in favour of these more promising avenues of influence.

On the public-international side, as a result of policy globalization, policy actors can also pursue their objectives internationally. As previously noted, policy globalization

broadens the range of interests and coalitions around policy issues, and catalyses the emergence of transnational relationships.⁴⁴ Indeed, as Atkinson and Coleman note, national governments may become less influential members of a policy community when the community involves multiple transnational linkages unmediated by the state.⁴⁵ That is, stronger network connections may exist between non-state domestic interests and foreign actors (e.g., non-government organizations, foreign bureaucracies, or international institutions) than between domestic actors and their national representatives.

Similarly, Risse-Kappen argues that the impact of transnational actors on state policies is conditioned by differences in domestic structures and differences in the degree of international institutionalization of the specific issue-area.⁴⁶ This suggests that where domestic policy actors perceive they will enjoy greater success in pursuing their policy objectives in other states, they may exit domestic consultative processes for transnational networks. Where this occurs, domestic interests may be capable of wielding significant policy influence in the international arena independent of – even in opposition to – their national governments. This study hypothesizes that where domestic actors perceive that more effective channels for interest representation exist (or can be created) at the international level, they may redirect their energies from domestic consultative processes to attempts to pursue their objectives internationally. This then, should reflect in the level and nature of participation in domestic consultations.

⁴³ Interview 1319.

⁴⁴ Doern, Pal and Tomlin, *Border Crossings*.

⁴⁵ Atkinson and Coleman, "Policy networks."

⁴⁶ Risse-Kappen, *Bringing Transnational Relations Back In*.

Moving to the table's third column on private channels, if nonstate actors are able to pursue their policy objectives through the creation of private regimes (versus public policy), they may forego the consultative process in favour of private regulation. Cutler, Haufler, and Porter argue that states are voluntarily abandoning certain market coordination functions such as standards-setting due to the forces of liberal ideology, globalization, lack of state capacity to deal with current issues, and the proliferation of technologically complex and information-rich issue areas.⁴⁷ This can create a policy space for private actors to use private sector authority to resolve problems pertaining to international commerce heretofore handled by public authorities. Empirical evidence appears to support this contention. In the absence of government regulation of the Internet, for example, corporations providing Internet content and access have cooperated to develop a regime for property rights, means of exchange, and security and enforcement for on-line commerce.⁴⁸

The creation of private regimes may also be motivated by the desire to avoid public regulation. Indeed, Ronit and Schneider, in their empirical investigation of international private sector self-regulation, suggest that one of the key factors motivating self-regulation was the avoidance of public regulation.⁴⁹ In the three cases under investigation – pharmaceuticals, the chemical dye industry, and international business chambers – the private sector perceived state regulation as potentially more restrictive than a private regime as well as inimical to private sector influence on future regulatory

⁴⁷ Cutler, Haufler and Porter, *Private Authority and International Affairs*, 4.

⁴⁸ Spar, "Lost in (Cyber)space."

change. This dissertation hypothesizes that where corporate actors believe they can more effectively pursue their interests independently of the state, they are likely to exit deliberative consultations. As shown in Table 1, this can occur at either the domestic or international levels.

Finally, this study recognizes that the variable “alternative channels” may be exogenous or endogenous. That is, alternative channels may exist independently of a consultative initiative (exogenous), or, policy actors may create an alternative channel if they are dissatisfied with a consultative initiative (endogenous). In other words, the research investigates the idea of alternative channels being both cause and effect of participation. For example, the variables alternative channels and state behaviour may be correlated: where state behaviour is inimical to the policy interests of consultation participants, they may mobilize to forge an alternative channel. As the chapters on the SAGIT experience at the time of the CUSFTA and NAFTA negotiations reveal, alternative channels constituted an endogenous variable in relation to SAGIT members’ participation.

(iii) Reframing Processes

“Les chiens se mordent l’un l’autre. Mais quant au loup, ils s’unissent.”
Inconnu.

The study’s third hypothesis seeks to uncover the way in which reframing processes impact the nature of industry participation in consultations. “Reframing” refers

⁴⁹ Ronit and Schneider, “Global Governance Through Private Organizations.”

to changing the underlying structures of belief, perception, and appreciation on which policy positions rest.⁵⁰ This research examines the hypothesis that reframing, by altering policy preferences and positions, reconfigures interest group politics, thereby altering participant behaviour within consultative processes. Policy network literature suggests that exogenous or endogenous crises can stimulate reframing. Klijn writes that “Striking, shocking events often serve as a trigger for reframing, whether consciously directed or not.”⁵¹

Whether exogenous or endogenous, reframing can reconfigure interest group politics by engendering preference reversals. Public choice theorists study reframing with the concept of “dimensionality” and its capacity to reverse preferences. Riker demonstrated this concept using the case of American decommissioning of nerve gas during the Vietnam War, at which time Senator Warren Magnusson reversed the voting preferences of numerous senators to his advantage by introducing a new dimension into the debate.⁵² Magnusson successfully argued that failure to pass a proposed amendment on decommissioning would result in greater presidential control over foreign policy, an outcome not favoured by many Senators. This preference reversal resulted from Magnusson’s successful reframing of the issue.

⁵⁰ Donald A. Schön and Martin Rein. *Frame Reflection: Toward the Resolution of Intractable Policy Controversies*. (New York, Basic Books, 1994).

⁵¹ Klijn, “Policy Networks,” 52.

⁵² William H. Riker, *The Art of Political Manipulation*. (New Haven: Yale University Press, 1986).

This research focuses on reframing prompted by exogenous processes in the international environment and seeks to assess the impact of these processes on the nature of industry participation in domestic consultations. Policy globalization may present common threats or opportunities that serve to (a) uncouple previously shared interests and policy preferences of domestic actors and/or (b) align previously divergent interests and policy preferences of domestic actors. In other words, the research hypothesizes that changes at the international level can impact the nature of participation in domestic consultation processes by either uncoupling interests (i.e., prompting conflict) or unifying actors through shared threats or opportunities (i.e., prompting cooperation). Indeed, Taylor, Warrack, and Baetz maintain that "*The key to successful consultation between business and government is that the process address a strategic priority for both parties. That is, something both urgent and important that threatens their very existence.*"⁵³ Policy globalization may present the common threat (or opportunity) that generates a strategic priority for participants in a consultation. Given the broad scope of change at the international level, this research confines its analysis to the impact of trade liberalization on participant engagement (described in this chapter's segment on methodology).

⁵³ D. Wayne Taylor, Allan A. Warrack and Mark C. Baetz. *Business and Government in Canada: Partners for the Future* (Scarborough: Prentice Hall Canada, 1999), 205, emphasis in original.

Summary of Working Hypotheses

Figure 3 on the following page reproduces Figure 2 from the introductory chapter (that illustrated the dissertation's dependent variables). The new figure incorporates this chapter's explanation of the dissertation's working hypotheses. It illustrates the dependent and independent variables examined in this study, and formalizes the dissertation's hypotheses. There are two broad columns in the diagram that correspond to the study's dependent variables, level of engagement and nature of engagement. The diagram illustrates these variables serially to recognize that collaborative or conflictual group dynamics (the nature of engagement) flow only from active levels of engagement of the group, as previously discussed. The boxes in the body of the diagram illustrate the various forms of both the level and nature of engagement examined herein. The three arrows emerging from the box marked "level of engagement" illustrate the three levels of participant engagement examined in this study: active engagement, passive engagement, and disengagement. The two boxes to the right of these three pertain to the nature of participation, specifically the intrasectoral dynamics of a consultation, showing the two dynamics under investigation in this study, intrasectoral conflict and intrasectoral collaboration. As previously discussed, conflictual or collaborative engagement obtains only from active levels of participation, and as such, the left-hand side of the diagram on level of engagement joins the right-hand side on the nature of engagement through the solid arrows leading from the active engagement box (the dashed arrows on either side of the passive engagement box are discussed below).

Figure 3: Working Hypotheses

The final two boxes in the figure illustrate that sector-governmental dynamics may be either conflictual (the box marked “sector-governmental conflict”) or collaborative (the one beneath, marked “sector-governmental collaboration”). The diagram portrays intrasectoral and sector-governmental dynamics in serial fashion in recognition that sector-governmental collaboration can only occur when there is collaboration at the intrasectoral level. That is, sector-governmental collaboration presupposes intrasectoral collaboration and as such, there is only one arrow leading to this box (from the intrasectoral collaboration box).

The shaded portions of Figure 3 show the dissertation’s independent variables (role of the state, alternative channels, and reframing processes) and note in brackets the two potential levels of each of the variables examined in this study. State behaviour may be either Favourable (F) or Inimical (I) to participant interests, alternative channels may be either Many (M) or Few (F) in number, and reframing processes may either serve to Align (A) or Uncouple (U) participant interests. As the figure shows and as the following paragraphs further explain, the study hypothesizes that state behaviour and alternative channels affect the level of engagement, reframing processes affect the nature of intrasectoral engagement, while the sector-governmental dynamic will depend on state behaviour.

The letters beside the arrows identify the individual working hypotheses of the study. Beginning at the left-hand side of the diagram, this dissertation hypothesizes that

when state behaviour is favourable to participant interests, participants will display active levels of engagement irrespective of the number of alternative channels (FM=favourable/many channels; FF=favourable/few channels). In contrast, the dissertation hypothesizes that when participants perceive state behaviour as inimical to their interests, their level of engagement will depend on the number of alternative channels. Where participants perceive there are few promising alternative channels, they will tend to actively engage (IF=inimial/few channels) and where they perceive there are many promising alternative channels (IM=inimical/many), they are more likely to disengage from the process.

The figure shows a dashed arrow leading to the box marked “passive engagement” from the disengagement box to recognize that participants who might otherwise disengage may engage passively for strategic or other purposes (e.g., information acquisition, lack of expertise in the consultation subject matter, absence of a direct policy interest in the discussions of the group, etc., as previously discussed). The dashed arrows leading *from* the passive engagement box are described in subsequent paragraphs below.

Moving to the box marked “active engagement,” the dissertation hypothesizes that where reframing processes pose shared threats or present common opportunities, group members will display intrasectoral collaboration (intrasectoral conflict) where the threat/opportunity serves to align (uncouple) their interests.

The presence of passively engaged participants can also facilitate intrasectoral collaboration by muting active conflict in the group. The figure shows this with the dashed arrow leading from the passive engagement box to the box marked intrasectoral collaboration. When a number of consultation participants engage passively, they may indirectly enable group collaboration if they choose not to voice opposition to or to actively conflict with other group members even if they disagree with the substance of the group's discussions. The figure uses dashed arrows to show the role of passive engagement because of this study's focus on active engagement levels of at least a core group of consultation participants (i.e., not explicit or implicit break-down of a consultation). Passively engaged participants represent a secondary or subsidiary subgroup within the main consultation body. Dashed arrows also indicate that passive engagement *indirectly* (rather than directly) promotes collaborative dynamics in a consultation.

Moving to the last two boxes in the diagram, the dissertation hypothesizes that state behaviour will play a paramount role in influencing the consultation dynamics between the sector and the government. Where participants perceive state behaviour as inimical to their interests (I), sector-governmental conflict is likely to obtain. In contrast, when consultation members believe state behaviour is favourable to their interests (F), it is more likely that the sector and the government will display collaborative relations. As noted previously, this latter outcome obtains only under circumstances of intrasectoral collaboration given the unlikelihood of sector-governmental collaboration under

conditions of intrasectoral conflict. In addition, passively engaged participants may also contribute to sector-governmental collaboration if they choose not to voice opposition to or conflict with the government even if they believe state behaviour is inimical to their interests. The figure shows this proposition with the dashed arrow leading from the passive engagement box to the box marked sector-governmental collaboration.

A TWO-LEVEL APPROACH TO TRADE NEGOTIATIONS

Policy globalization confronts national governments with the need to link their domestic and international relations. That is, as the proportion of domestic policy issues tackled at the supranational level rises, the range of policy issues for which national governments must draw linkages between their foreign and domestic relations also grows. On the one hand, governments must ascertain and respond to the policy pressures in their domestic environment, and on the other, they must negotiate with and manage their ongoing relations with their international counterparts. The implication for the domestic policy process is that as domestic policy is increasingly “negotiated” through inter-state agreements, the politics of domestic policy-making increasingly resemble the politics of international negotiations.

Putnam conceptualizes the politics of international negotiations with the metaphor of two-level games, where national governments figuratively sit at two tables in international negotiations: a domestic table and an international one.⁵⁴ At the domestic

⁵⁴ Robert D. Putnam, “Diplomacy and Domestic Politics: the Logic of Two-Level Games,” *International Organization* 42 (3) (1988), 427-460.

level, they negotiate with their domestic constituents, ascertaining constituents' preferences for negotiation outcomes as well as seeking to increase their domestic political power. Putnam essentially characterizes political dynamics at the national level as pluralist interest group politics with rational vote-maximizing politicians: "...domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups."⁵⁵ At the international level, meanwhile, governments negotiate with their foreign counterparts to reach a mutually satisfactory agreement. At this table, they seek to maximize their capacity to satisfy domestic pressures while working to forge an agreement that is also acceptable to their foreign counterparts. The politics of international negotiations à la Putnam, therefore, are the political dynamics at each of these tables, as well as the dynamics that take place between them.

The primary research question and hypotheses of this dissertation aim to contribute to understandings of the structure and functioning of the "domestic table" in trade negotiations. Specifically, as described in this chapter and in the introductory chapter, the dissertation seeks to account for private sector participation in deliberative consultation processes established by the state. Following the metaphor of two-level games, a deliberative consultation represents a state-created domestic table that the government can use to ascertain domestic preferences. This dissertation hypothesizes, then, that the level and nature of participant engagement at a state-controlled domestic table depends integrally on government decisions respecting the structure and functioning

⁵⁵ Ibid, 434.

of the table (role of the state), on the existence of other forums at which or tables at which the private sector can channel its views to the government (alternative channels), and the impact of international threats or opportunities on the policy interests of participants sitting at the domestic table laid by the state (reframing processes).

One of the aims of this research, then, is to query the response of nonstate actors to state-created domestic tables. What accounts for participants' level of engagement in these forums? Do state behaviour and opportunities for interest representation beyond the consultation forum affect whether participants engage actively, engage passively, or disengage entirely? For example, if consultation members are dissatisfied with the table set by the government, will they opt for (or create) an alternative table at which to engage the government? Moreover, what accounts for the nature of participation at state-created domestic tables? What role do reframing processes and state behaviour play in accounting for conflictual or collaborative outcomes of participation among consultation members and between consultation members and the state? By posing these theoretical questions and examining empirically the hypotheses proposed in this chapter, this dissertation seeks to contribute to scholarly inquiry respecting both the structure and functioning of domestic-level consultations in international trade negotiations.

Three of Putnam's insights are particularly relevant to the present study. First, he observes that behavioural incentives for national governments may differ at the domestic and international tables. As he states, "moves that are rational for a player at one board

(such as raising energy prices, conceding territory, or limiting auto imports) may be impolitic for that same player at the other board".⁵⁶

Second, any agreement negotiated at the international level must be ratified at the domestic level. Putnam argues that ratification "imposes a crucial theoretical link"⁵⁷ between the international and domestic levels. States must reach agreement with their international counterparts, but at the end of the day, these agreements must be ratified domestically.

Putnam arguably developed the two-level negotiating metaphor primarily with the United States in mind. Ratification in the US is a crucial legislative step in trade negotiations because while the President is the initiator of treaties under Article II, Section 2(2) of the American constitution, under this same clause, "it is the Senate, by two-thirds majority, which has the power to authorize ratification of treaties."⁵⁸ The American constitutional requirement for legislative ratification therefore positions ratification as a crucial step in the treaty-making process of the United States.⁵⁹

⁵⁶ Ibid, 434.

⁵⁷ Ibid, 436.

⁵⁸ Thomas M. Franck, "Can the United States Delegate Aspects of Sovereignty to International Regimes?" in Thomas M. Franck, ed., *Delegating State Powers: The Effect of Treaty Regimes on Democracy and Sovereignty* (US: Transnational, 2000), 3.

⁵⁹ In order to avoid legislative "gridlock" and multiple amendments to agreements signed by the executive, the President seeks "fast track" or "trade promotion" authority from Congress. When the President possesses trade promotion authority, the ratification of

This differs from the Canadian system, meanwhile, where the federal government exercises exclusive treaty-making powers.⁶⁰ Canada's constitution empowers the political executive to sign and ratify treaties independent of the legislature: "There is no legal requirement that the Parliament give its approval to either the signing or the ratification of a treaty."⁶¹ Having said this, ratification still plays a crucial role in the Canadian context by linking the international and domestic tables. It does so, however, in a different manner than in the United States.

First, the practice of Canadian governments has been to seek Parliamentary approval of "the most important treaties" prior to ratification.⁶² While in Canada's system of parliamentary government with its tradition of strict party discipline, "the cabinet can count on virtually automatic support from a majority in the House for any measure it proposes,"⁶³ where a House or Senate majority is lacking, the approval of treaties prior to ratification may be less than automatic. Under these circumstances, ratification can constitute a crucial consideration in Canada's trade negotiations process.

negotiated treaties can only take place through an up or down vote in the legislature (i.e., no amendments can be made to the agreement).

⁶⁰ Hogg, *Constitutional Law in Canada*, 11-3.

⁶¹ Ibid, 11-4.

⁶² Ibid, 11-4 – 11-5. Hogg notes that between 1946 and 1966 the federal government lay before Parliament approximately one-quarter of treaties requiring ratification. He also indicates that only a minority of treaties now require formal ratification (11-4) and "there is no practice of securing Parliament's approval of treaties which do not require ratification" (11-5).

Second, and arguably of greater importance, Putnam notes that ratification can refer not only to formal voting procedures but also to informal decision processes required to *endorse* an agreement. The relevant actors for these informal procedures may not be legislators, but “bureaucratic agencies, interest groups, social classes or even “public opinion””.⁶⁴ The importance of informal endorsement as a means of linking the international and domestic levels in treaty-making would certainly apply in a representative democracy like Canada, where elected leaders must always train their sights on future electoral prospects. Indeed, public opinion is identified as one of the major constraints on the independent exercise of executive authority in Canada.⁶⁵ Moreover, in Canada, one may add to this list of critical endorsement players “the provinces.” This plays out not only in federal-provincial relations, but also at the Cabinet table. The tradition of provincial representation in Cabinet aims to ensure that regional interests are at the fore in the process of executive decision-making.⁶⁶

What is crucial when it comes to ratification, is *ex ante* expectations on the part of those negotiating internationally as to the prospects for an agreement’s acceptance in the domestic environment. While the Canadian executive may indeed wield greater legal

⁶³ Patrick Malcolmson and Richard Myers, *The Canadian Regime*, 2nd ed. (Peterborough: Broadview, 2002), 59.

⁶⁴ Putnam, “Diplomacy and Domestic Politics,” 436.

⁶⁵ Michael S. Whittington and Richard J. Van Loon, *Canadian Government and Politics: Institutions and Processes*. (Toronto: McGraw-Hill Ryerson, 1996), 570.

⁶⁶ Savoie notes that one of the most important roles of Cabinet is to accommodate regional and provincial interests (Donald J. Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics* (Toronto: University of Toronto Press, 2000), 48).

power respecting formal ratification than its American counterpart, expectations regarding the level of domestic support for an agreement nonetheless build a powerful connection between the domestic and international levels.

Third, ratification refers also to decision processes at the domestic level required to *implement* an agreement reached internationally. In Canada, Parliament plays a legal role in the implementation of international treaties. Where an international agreement requires the amendment of the internal laws of the country, its implementation necessitates the enactment of a statute making the relevant legislative changes. This differs from the American system, where the US Constitution makes international treaties part of “the supreme law of the land” (Article VI, paragraph 2).⁶⁷ In Canada, in the absence of implementing legislation, internal law takes priority over any international agreement signed and ratified by the executive: “...the courts of Canada ... will not give effect to a treaty unless it has been enacted into law by the appropriate legislative body; ... the courts will apply the law laid down by statute or common law, even if it is inconsistent with a treaty which is binding upon Canada.”⁶⁸

⁶⁷Robert E. Dalton, “Participation in Treaty Regimes: Putting the Constitutional and Legal Issues in Historical Perspective,” in Thomas M. Franck, ed., *Delegating State Powers: The Effect of Treaty Regimes on Democracy and Sovereignty* (US: Transnational, 2000), 20-21. This automatic incorporation into internal American law is not difficult to understand when one recalls that the US Constitution requires the President to obtain Senate approval for ratification. In Canada, automatic incorporation would run counter to parliamentary supremacy if the executive could change Canadian law simply by signing and ratifying a treaty.

As noted above, where the government of the day possesses a Parliamentary majority, this aspect of ratification would impose virtually no constraint on the executive. In the absence of a majority, however, the decision process to give effect to an international agreement may prove to be an important link between the international and domestic levels.

Moreover, where the process of treaty implementation can build a very strong and direct relationship between the international and domestic levels in Canada is when it pertains to areas of provincial jurisdiction. In the United States, as previously noted, international treaties become part of "the supreme laws of the land" and as such, take precedence over state laws inconsistent with treaty provisions.⁶⁹ In Canada, meanwhile, a treaty does not become part of the internal laws of the country unless it is given legislative effect. In areas of provincial jurisdiction, existing case precedent suggests that "the federal government cannot ensure the performance of treaties which require legislation within the legislative competence of the provinces."⁷⁰ As a result, this dimension of ratification can impose a strong connection between the international and

⁶⁸ Hogg, *Constitutional Law in Canada*, 11-6.

⁶⁹ The history behind this feature of the American constitution and constitutional challenges to the supremacy clause are laid out in, Dalton, "Participation in Treaty Regimes."

⁷⁰ Hogg, *Constitutional Law in Canada*, 11-14. For a full discussion, see 11-7-11-16.

domestic levels, requiring the federal government to, as Hogg suggests, consult with the provinces to secure their support before making a treaty.⁷¹

The above three reasons suggest that ratification represents an important link between the international and domestic tables in Canada, albeit for different reasons than in the United States. Clearly the constitutional requirement for the legislature to approve international treaties in the United States engenders a strong relationship between the international and domestic tables. In Canada, although Parliament plays no legal role in the approval of treaties, the practice of submitting important agreements to the legislature for approval before executive ratification can represent an important step where the government of the day lacks a Parliamentary majority. Informal endorsement in the court of public opinion and by various key actors among the Canadian polity will also play a pivotal role in linking the domestic and international levels in Canadian treaty-making. Finally, the constitutional requirement for implementing legislation can generate powerful incentives for the federal government to simultaneously examine domestic and international imperatives in treaty-making. This is particularly true with regards to agreements dealing with areas of provincial jurisdiction, but also applies where the government of the day lacks a Parliamentary majority.

⁷¹ Ibid, 11-14. Hogg notes that the executive can also incorporate a "federal state clause" into an agreement, a clause under which the federal government undertakes only to fulfill those obligations under its jurisdictional competence.

Putnam's third insight of note is that a negotiated agreement is only possible where domestic and international "win-sets" overlap. That is, there must be some common ground between the set of all possible agreements that would gain support at the domestic table and the set of all possible agreements that could be negotiated at the international one. Because of the requirements of ratification, any agreement negotiated at the international table must fall within the range of satisfactory agreements at the national level. While Putnam again seems to have developed this insight with a decidedly American lens in hand,⁷² given the important (albeit different as discussed above) role in Canada of domestic ratification, this insight is also crucial in the Canadian context.

The requirement that domestic and international "win-sets" overlap bears two important implications. First, domestic preferences must be satisfied (or seen to be satisfied) by an international agreement. Second, the insight has a critical corollary: domestic and international win-sets must not be mutually exclusive, i.e., share no

⁷² Putnam defines a "win-set" as "the set of all possible [international] agreements that would "win" ... when simply voted up or down" (Putnam, "Diplomacy and Domestic Politics," 437) in keeping with American trade promotion authority, where ratification takes place through an up or down vote in Congress. In the Canadian context, one needs to conceive of "winning" in terms of the Canadian process of ratification, i.e., the executive securing (a) Parliamentary approval when it submits agreements to the legislature prior to ratification and/or when implementing legislation is required to give force to international agreements; (b) informal endorsement from relevant political actors such as the provinces, the private sector, the Canadian public, etc.; and (c) securing provincial approval when provinces must pass implementing legislation to ratify an agreement the executive signed internationally.

common ground. Putnam argues that where win-sets do not overlap, negotiations run a greater risk of breaking down.

These three insights – that behavioural incentives for national governments may differ at their domestic and international tables, that agreements negotiated at the international level must be ratified domestically, and that negotiated agreement is only possible where domestic and international win-sets overlap – do much to illuminate the political dynamics inherent in trade negotiations in the cultural industries. As the following chapters discuss, the Canadian government typically faces contradictory imperatives in its domestic and international environment respecting the cultural industries in trade. In its domestic environment, nonstate actors frequently advocate exclusion of the cultural industries from the disciplines of the international trading regime, while in the international environment, the Canadian government faces contradictory demands from the United States to negotiate provisions liberalizing trade in the cultural sector.

As such, the Canadian government is typically between a proverbial “rock and a hard place” when it comes to the cultural industries. On one side, it faces “the rock” of a domestic constituency that includes actors opposed to trade liberalization in the cultural industries sector. The main actors are business interests in the cultural sector averse to liberalizing Canada’s cultural policy regime and a Canadian electorate with a demonstrated sensitivity to issues perceived to imperil Canada’s cultural sovereignty. On

the other side, the Canadian government faces “the hard place” of a global super-power, the United States, whose trade negotiating position on culture is the very antithesis of Canada’s: seeking to liberalize trade in the cultural sector, one of its largest export industries.

The cultural industries -- or “copyright industries” -- as they are often referred to in the United States, comprise one of the country’s leading export sectors. Table 2 shows the estimated revenues from exports and foreign sales in the sector in the period 1991 to 2000. As the table reveals, estimated revenues more than doubled over the decade from \$36 billion in 1991 to over \$85 billion in the year 2000.

Table 2:
Estimated Revenues Generated by Foreign Sales/Exports of US Copyright Industries,⁷³ 1991-2000

Year	Estimated Revenues (billions of dollars)
1991	36.19
1992	39.19
1993	43.78
1994	48.33
1995	53.11
1996	60.18
1997	66.85
1998	69.21
1999	79.41
2000	85.46

Source: Stephen E. Siwek, *Copyright Industries in the US Economy: The 2002 Report* (Washington, DC: International Intellectual Property Alliance, 2002), Appendix A, Table 9.

⁷³ The “copyright industries” include newspapers and periodicals, book publishing and related industries, music publishing, radio and television broadcasting, cable television, records and tapes, motion pictures, theatrical productions, advertising and computer software and data processing. Revenues are estimates because US export statistics do not measure the value of subsequent sales and royalty revenues in foreign markets.

The copyright industries increasingly represent one of the United States' most important export industries. In 1995, for example, with estimated revenues of \$53 billion, only the chemical, automotive, and agricultural sectors posted higher export earnings (with exports of \$68.4 billion, \$62.7 billion, and \$54.1 billion, respectively).⁷⁴ By 1997, the estimated foreign revenues of the copyright industries stood at \$66.9 billion, outpaced only by the chemical sector's foreign revenues of \$78.8 billion (exports and foreign sales in the copyright sector exceeded those in the automotive and agricultural sectors, with these latter two sectors posting foreign sales/exports of \$58.3 billion and \$57.3 billion, respectively).⁷⁵ By the year 2000, the \$85.5 billion in estimated revenues of the copyright industries positioned the sector as the largest export industry of the United States, followed by the chemical (\$74.4 billion), motor vehicle (\$59.8 billion) and aircraft (\$51.5 billion) sectors.⁷⁶

⁷⁴ Stephen E. Siwek and Gale Mosteller, *Copyright Industries in the US Economy: The 1996 Report* (Washington, DC: International Intellectual Property Alliance, 1996). The chemical sector includes drugs and pharmaceuticals.

⁷⁵ Stephen E. Siwek, *Copyright Industries in the US Economy: The 1999 Report* (Washington, DC: International Intellectual Property Alliance, 1999). The chemical sector includes drugs and pharmaceuticals.

⁷⁶ Stephen E. Siwek, *Copyright Industries in the US Economy: The 2002 Report* (Washington, DC: International Intellectual Property Alliance, 2002). It bears mentioning that these figures were drawn from publications prepared by the International Intellectual Property Alliance, a group with a mandate "to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials." (<http://www.iipa.com/aboutiipa.html>). As such, they should be interpreted with caution. Having said this, they do possess two advantages relative to the statistics of the US Commerce Department. First, they bring together into a single category the disparate figures for all of the cultural industries subsegments from the US Commerce Department. Second, as mentioned in the footnote to Table 1 above, they attempt to estimate the value of foreign sales such as exhibition and royalties that take place subsequent to the export of a single master version of a copyrighted work.

As a country with a persistent trade deficit, liberalizing international commerce in one of its strongest export sectors can represent an important economic goal. The American economy posted trade surpluses throughout the 1960s, but annual trade deficits characterized most of the following decade, and the US economy has not posted a single annual trade surplus since the year 1975.⁷⁷ Table 3 below shows the balance of payments in US trade in five-year intervals over the period 1960 to 2000. As the table reveals, the annual trade surpluses in the years 1960, 1965, 1970 and 1975 were replaced with annual trade deficits in the years that followed. Between the years 1980 and 2000, the American trade deficit increased almost twenty times over, from a value of \$19 billion in 1980 to \$378 billion in the year 2000.

Table 3:
United States Trade - Balance of Payments, 1960-2000

Year	Balance of Payments (millions of dollars)
1960	3,508
1965	4,664
1970	2,254
1975	12,404
1980	-19,407
1985	-121,880
1990	-80,860
1995	-96,388
2000	-378,681

Source: US Census Bureau, Foreign Trade Division, Historical Series, *US International Trade in Goods and Services: Annual Totals, 1960 to 2001*.
(available at <http://www.census.gov/foreign-trade/statistics/historical/index.html>)

⁷⁷ US Census Bureau, Foreign Trade Division, Historical Series, *US International Trade in Goods and Services: Annual Totals, 1960 to 2001*, available at <http://www.census.gov/foreign-trade/statistics/historical/index.html>.

Moreover, given the dependence of the Canadian economy on the American market, the United States possesses tremendous political-economic clout vis-à-vis the Canadian government. Faced with this bilateral “hard place” in cultural industries trade negotiations, the Canadian government seems to pursue a policy path that addresses this bilateral/domestic-level dilemma by striking agreements that balance off domestic demands for exemptions with calls from the United States for free trade in the sector. The Canadian government seems to address this negotiating predicament by negotiating what one might term double-edged provisions.⁷⁸ That is, the government negotiates provisions in trade agreements with two edges: a domestic edge that seeks to meet the needs of domestic constituents, and a bilateral edge that seeks to meet the needs of the United States.

As noted above, a negotiated agreement is only possible where domestic and international “win-sets” overlap. That is, there must be some common ground between the set of all possible agreements that would gain support at the domestic table and the set of all possible agreements that could be negotiated at the international one. In other words, the domestic and international win-sets cannot be mutually exclusive. Where they are, negotiations run a greater risk of breaking down – because an agreement cannot be reached where there is no overlap between these win-sets.

⁷⁸ Credit for this powerful metaphor is of course owed to Peter B. Evans, Harold K. Jacobson and Robert D. Putnam, in their seminal edited work on the role of domestic politics in international negotiations (inspired by Putnam’s “two-level” analysis described above), *Double-Edged Diplomacy: International Bargaining and Domestic Politics*. (Berkeley: University of California Press, 1993).

In response to this negotiation predicament, which appears to characterize the Canadian government's position on the cultural industries vis à vis the United States, the government seems to pursue double-edged provisions, that is, provisions that incorporate both a domestic and a bilateral edge, one edge for the domestic level to satisfy domestic imperatives, and one for the bilateral level that satisfies demands at that table.

The cultural industries exemption (CIE) negotiated in the CUSFTA and carried over in the NAFTA represent double-edged provisions linking mutually exclusive domestic/bilateral win-sets. As Chapters 5 and 6 describe, because of the CIE, the Canadian government could (and did) claim at the domestic table to have "exempted" cultural industries from the CUSFTA and NAFTA, thereby appeasing politically commanding domestic concerns. At the same time, the provision included a broad right of retaliation for the United States if Canada maintained or enacted cultural measures inconsistent with the rest of the agreement, thereby making the exemption palatable to the Americans.⁷⁹ In other words, the provision's domestic edge addressed domestic concerns that the CUSFTA and NAFTA would compromise Canada's cultural policy-making capacity, while the international edge met the needs of the Americans by providing the US with a unilateral right of retaliation if the Canadian government undertakes cultural

⁷⁹ As explained in Chapter 5, this exemption differs from the cultural industries exemptions in Canada's free trade agreements with Israel and Chile, where there is no right of retaliation. Bernier describes these latter exemptions as "true" cultural exemptions (Ivan Bernier, "Preserving and Promoting Cultural Diversity: Necessity and Prospects for Action," Working Document prepared for the *First International Meeting of Professional Associations in the Cultural Milieu* (September 10-13, 2001, Montreal, Quebec, Conference presented by the Coalition for Cultural Diversity), 6-7.)

measures inconsistent with the remainder of the agreement's provisions. Chapters 5 and 6 describe the cultural industries exemption in the CUSFTA and the NAFTA in greater detail, along with the two-level negotiating dynamics leading up to the signing and ratification of each of these agreements.

METHODOLOGY

The empirical component of this dissertation examines industry consultation in the trade policy field. The study focuses on trade policy not only because government and industry interact to an unprecedented degree in trade policy formulation,⁸⁰ but also because this domain is an increasingly globalized policy sector. Trade policy encompasses an ever greater proportion of erstwhile domestic policy prerogatives (e.g., business framework laws and investment laws),⁸¹ making the field a rich and fertile ground for this research. Furthermore, seasoned observers suggest that the Canadian private sector needs to be more actively involved in Canadian trade policy formulation,⁸² a situation that raises the potential practical value of the research findings of this study.

The study examines the Canadian federal government's Sectoral Advisory Groups on International Trade. As described fully in Chapter 3, the SAGITs are deliberative consultative bodies established in 1986 to advise the Minister for International Trade on trade policy and trade development. They are an attempt by the federal government to

⁸⁰ Alan M. Rugman and Alain Verbeke, *Global Corporate Strategy and Trade Policy* (New York: Routledge, 1990).

⁸¹ Doern and Tomlin, "Trade-Industrial Policy."

institutionalize business-government consultation along sectoral lines, and are especially unique in their capacity to serve as forums for domestic actors to reconcile divergent intrasectoral interests. Although scholars recognize the SAGITs are an important development in Canada's international public policy process,⁸³ there is scant empirical analysis of the groups.

While Chapter 3 undertakes a detailed review and analysis of the existing empirical literature on the SAGITs, this paragraph provides a brief overview of SAGIT research. Helen Moroz has arguably undertaken the most detailed analysis of the SAGITs to date in her examination of SAGIT structure and functioning in the negotiations leading to the Canada-United States Free Trade Agreement.⁸⁴ Moroz contends that the SAGITs represented a form of elite tri-partitism.⁸⁵ Rugman and Anderson also examined the SAGITs in the CUSFTA period, describing the institutional

⁸² Michael Hart, "Canadian business and Canadian trade policy" *Policy Options* 21, 7 (2000) 50-54.

⁸³ T. Draiman and B. Plewes, "Civil Society and the Democratization of Foreign Policy," in Maxwell A. Cameron and Maureen Appel Molot, eds., *Canada Among Nations 1995: Democracy and Foreign Policy*. (Ottawa: Carleton University Press, 1995).

⁸⁴ Helen Moroz, *The Changing Constellation of State-Societal Relations in Canada: A Case Study of the Domestic Consultations Leading to the Canada-U.S. Free Trade Agreement*, (Kingston: Unpublished PhD thesis, Department of Political Studies, Queen's University, 1996).

⁸⁵ Moroz utilized a corporatist framework to examine SAGIT structure and functioning and argued that the creation of SAGITs represented the emergence of corporatism in Canada. While this dissertation shares to some degree her conceptualization of the SAGITs as corporatist arrangements, it parts company with her belief that they signify corporatist policy-making. The SAGITs are not the sole forum for trade policy-making in Canada, and therefore do not constitute the emergence of corporatism in the country. This study's use of corporatist concepts seeks to highlight both the role of state behaviour in structuring consultations and the importance of the capacity for participants to exit the process.

structure of the SAGITs following their creation⁸⁶ and predicting the likely orientations of individual SAGITs toward free trade based on the extent to which the sector they represented would benefit from liberalized trade.⁸⁷ Meanwhile, Doern and Tomlin maintain that the SAGITs served a dual purpose for the Canadian government pre-CUSFTA: as advisory bodies and as buffers against protectionist interest group pressure.⁸⁸ In a more recent examination of the SAGITs, Macdonald alleges that the SAGITs privilege private sector access to trade decision-making and also signify a means for the state to co-opt business.⁸⁹

⁸⁶ Alan M. Rugman and Andrew Anderson, "Business and Trade Policy: The Structure of Canada's New Private Sector Advisory System," *Canadian Journal of Administrative Science* 4, 4 (1987), 367-380. As Chapter 3 discusses, this article sought primarily to describe the origins, structure and membership composition of the SAGITs, rather than to advance arguments concerning their functioning or significance in the policy process.

⁸⁷ Alan M. Rugman and Andrew D.M. Anderson, *Administered Protection in America* (New York: Croom Helm, 1987), 128-130. The authors predicted that SAGITs in industry sectors that stood to benefit from free trade would favour the agreement, those that stood to lose from liberalized trade would oppose it, and those where free trade would benefit some subsegments of the industry while challenging others, would exhibit a mixed orientation to free trade. In general, Rugman and Anderson's predictions were accurate (Doern and Tomlin, *Faith and Fear*, 113-114). While this dissertation does not seek to account for stands taken by a SAGIT but rather to account for the nature of engagement within it (i.e., conflictual or collaborative), it does share with Rugman and Anderson the belief that the impact of trade liberalization on an industry sector will constitute an important variable in accounting for the functioning of the group. Specifically, the present study hypothesizes that where trade liberalization serves to align (uncouple) SAGIT member interests, the group will display collaborative (conflictual) dynamics.

⁸⁸ Doern and Tomlin, *Faith and Fear*. As Chapter Three discusses, Doern and Tomlin's notion of the SAGITs as "buffers" illustrates the state's capacity to strategically manipulate a deliberative consultative channel to try to exclude other domestic actors from the policy-making process.

⁸⁹ Laura Macdonald, "Governance and State-Society Relations: The Challenges," in George Hoberg, ed, *Capacity for Choice: Canada in a New North America* (Toronto: University of Toronto Press, 2002), 187-223. Given this study's emphasis on the importance of "alternative channels," it parts company with Macdonald's assessment. First, although business possesses a "privileged position" in policy communities (Rodney

While the above studies address key issues related to the SAGITs, they do not attempt to examine how SAGITs illuminate the context for consultative processes in globalized policy milieus, nor do they attempt to explain the level and nature of private sector participation in the consultations. This dissertation examines the SAGITs in this light by undertaking a qualitative longitudinal case study of the Cultural Industries SAGIT.⁹⁰

The study utilizes both primary and secondary research sources in the cultural industries sector, government consultation and business-government relations, the SAGITs, trade negotiations, and trade disputes. The primary research consists of 30 semi-structured interviews with SAGIT members serving during the time periods under investigation, with public officials involved in the SAGIT process, and with government, private sector, and academic representatives in the cultural sector and trade policy communities. Interviews were undertaken on a confidential and anonymous basis.

Haddow, "Interest Representation and the Canadian State: From Group Politics to Policy Communities and Beyond", in J. Bickerton and A.-G. Gagnon, eds., *Canadian Politics*, 3rd ed. (Peterborough: Broadview Press, 1999)), group-state relations in trade policy do not take place solely within the SAGITs. In a pluralist system like Canada's, there are multiple channels for interest representation in the trade policy field (e.g., direct lobbying of ministers, representations to other line departments, appearances before the House of Commons Standing Committee on Foreign Affairs and International Trade, etc.). Second, this study hypothesizes that private sector actors will not remain complacent in the face of government attempts at co-optation. Because deliberative consultations take place in a pluralist context, consultation participants can choose to exit the process in favour of preferable alternative channels.

⁹⁰ As described in the next chapter, the SAGIT for the cultural sector was first named the Arts and Cultural Industries SAGIT but in later years was renamed the Cultural Industries SAGIT. References to the SAGIT in this text are time-sensitive, that is, in the early years when it held the name of the Arts and Cultural Industries SAGIT the dissertation refers to

Appendix A further describes the study's interview methodology, including the duration and content of interviews, the distribution of interviews between SAGIT and non-SAGIT members, and the distribution of interviews across the time periods of this study.

This SAGIT has been selected for study for three reasons. First, as described in the introductory chapter, the level and nature of industry participation in the process has varied markedly since its inception. In the negotiations leading up to the Canada-United States Free Trade Agreement, there appeared to be intrasectoral collaboration in the SAGIT, with a diverse group of members reaching consensus amongst themselves but engaging in considerable conflict with the government. Meanwhile, in the negotiations leading up to the North American Free Trade Agreement, no such sectoral-government conflict appears to have characterized the process. In fact, one of the reported negotiating strengths of the Canadian government in the cultural sector was strong industry-government consensus,⁹¹ suggesting that comprehensive collaboration characterized the process at this time. More recently, in the consultation period prior to the 1999 Ministerial Conference of the World Trade Organization (WTO), the Cultural Industries SAGIT seemingly demonstrated a high level of intrasectoral collaboration. The government publicly released a report collaboratively authored by the SAGIT, advising the Canadian government attempt to establish a New International Instrument on Cultural Diversity.

it as such, and in the later years following the name change, the study refers to it as the Cultural Industries SAGIT.

⁹¹ Maryse Robert, *Negotiating NAFTA: Explaining the Outcome in Culture, Textiles, Autos and Pharmaceuticals* (Toronto: University of Toronto Press, 2000).

Second, in recent years the cultural industries policy sector has experienced numerous exogenous shocks from the international environment that may serve as reframing processes. The cultural industries have been under significant pressure from the twin challenges of technological change and foreign countries' trade challenges to Canadian cultural industries policy. This may be prompting domestic actors to reframe their conceptualization of cultural industries policy and their interests and inter-relationships within the cultural milieu. As Acheson and Maule argue, "...the Canadian cultural industries are facing challenges driven by an interaction between technology and the trade policy response of other countries. Meeting these challenges requires rethinking and reorienting domestic policy..."⁹²

Third, the cultural industries policy network possesses multiple alternative public and private channels for interest representation and pursuit of policy objectives. Domestically, for example, the Department of Foreign Affairs and International Trade is not the only government department to which the cultural industries can turn. The Department of Canadian Heritage is a key policy player, with responsibility for national policies and programs relating to (among other sectors) the cultural industries. In this regard, Canadian Heritage has a Trade and Investment Policy Directorate that is responsible for "ensuring that cultural trade and investment objectives parallel Canada's domestic policy objectives in support of Canadian cultural content."⁹³ The cultural industries policy network also may possess alternative private channels for the pursuit of

⁹² Keith Acheson and Christopher Maule, *Much Ado about Culture: North American Trade Disputes* (Ann Arbor: University of Michigan Press, 1999), 58.

policy preferences. For example, as previously stated, in the absence of government regulation of the Internet, firms providing Internet access and content have cooperatively developed a private regime for property rights, means of exchange, and security and enforcement for on-line commerce.⁹⁴

It bears mentioning that the choice of the cultural industries sector as the focus of empirical study might affect the dissertation's findings in a number of respects. First, as discussed in Chapter 4, the federal government limits foreign ownership and control in certain segments of the industry. The degree of foreign direct investment in the Canadian economy can constitute an important variable challenging the development of consensus positions in the private sector because of differences in policy preferences between domestic and foreign-owned companies.⁹⁵ To the extent that restrictions on foreign ownership and investment in the cultural industries sector result in a reduction of diversity in policy preferences in the sector, this may affect this study's research findings respecting the nature of intrasectoral engagement. If, for example, the relatively higher degree of domestic ownership and control in the sector facilitates the achievement of industry consensus, the sector may be more likely to display collaboration at the intrasectoral level than in other industry sectors.

Second, as previously noted, the sector faces simultaneously the challenges of trade liberalization and technological change. While this circumstance makes the cultural

⁹³ Department of Canadian Heritage web site, <http://www.pch.gc.ca>.

⁹⁴ Spar, "Lost in (Cyber)space."

industries an ideal sector for study because it permits for an analysis of the impact of reframing processes on participant interests and engagement, to the extent that these challenges serve predominantly to align (uncouple) participant interests, they may not furnish the opportunity to study the impact of uncoupling (alignment) on engagement.

Third, the cultural industries sector is arguably more protectionist than open in its orientation toward trade liberalization. As Chapter 4 describes, policy intervention in the sector discriminates *by design* in favour of Canadian cultural products to promote their creation, production and distribution. This may affect the findings of this research study if the sector's protectionist orientation results in *de facto* conflict with the Canadian government over trade negotiations, i.e., irrespective of consultation participants' perceptions of the degree of policy influence of the SAGIT, the group may conflict with the government. The concluding chapter of the dissertation will reexamine the potential effect that this choice of sector may have had on the research results in light of the study's findings.

The dissertation examines the three consultative exercises noted above -- pre-CUSFTA, pre-NAFTA, and pre-1999 WTO Ministerial -- with a view to testing the hypotheses described in the previous section. That is, what accounts for the level and nature of cultural industries' participation in the SAGIT process? How did state behaviour influence participation? Did the existence or creation of alternative public or private channels impact the way in which the industry responded to the SAGIT process?

⁹⁵ Banting, "The State and Economic Interests."

If so, how? What was the role of reframing processes in the international environment? Did they reconfigure intrasectoral preferences and hence behaviour within the consultations?

These are the questions this dissertation seeks to answer in Chapters 5, 6 and 7. The next two chapters, as noted in the introductory chapter, set the context for the study by investigating SAGIT origins, structure and functioning (Chapter 3), and by examining Canadian policies in the cultural industries sector, industry profiles of key subsectors, and the changing cultural industries policy-making context (Chapter 4).

CHAPTER 3

THE SECTORAL ADVISORY GROUPS ON INTERNATIONAL TRADE

INTRODUCTION

The federal government's establishment of the Sectoral Advisory Groups on International Trade marked an important turning point in business-government relations in the field of trade policy. Prior to the creation of the SAGITs in 1986, the private sector had mostly informal involvement in trade negotiations and in the development of trade policy. Industry involvement, such as it was, was unstructured, minimal, episodic, and ad hoc. The SAGITs marked a fundamental change in Canada's trade policy-making process, by institutionalizing business-government consultation in trade policy matters, by developing a deliberative consultation process between the government and industry sector representatives, and by creating an ongoing forum for business-government consultation, a forum that remains a component of Canadian trade policy-making to the time of writing.

This chapter proceeds in three sections, which examine, respectively, the origins of the SAGITs, their institutional structure and functioning, and the existing empirical literature on the groups. As previously mentioned, there is little empirical research available on the SAGITs and the few existing investigations focus predominantly on SAGIT origins, structure and functioning at the time of the Canada-United States Free Trade Agreement. As such, the third section of this chapter weighs more heavily towards

the origins and early experience of the groups. Chapters 5 through 7 on the Cultural Industries SAGIT detail the experience of this SAGIT beyond its origins, and early structure and functioning.

ORIGINS OF THE SAGITs

Private sector consultation prior to the SAGITs

Prior to the federal government's creation of the SAGITs, the private sector's involvement in trade negotiations and in the broader process of trade policy-making was largely informal, episodic and ad hoc. Indeed, as discussed below, one of the principal reasons the federal government created the consultative groups was to respond to criticisms from industry that business had not been adequately consulted or involved in the Tokyo Round of multilateral trade negotiations (1973-1979).

Before the Tokyo Round, one of the only formal channels for private interest representation to the federal level on matters of trade policy was the House of Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT).¹ But as this channel fed in to the legislative branch of government, it offered only limited potential to influence trade policy-making -- in Canada, foreign-policy decision-making, including trade policy-making, is the responsibility of the political executive alone and Parliament

¹ Various known as the Standing Committee on Industrial and International Relations (1924-1945), the Standing Committee on External Affairs (1945-1968), the Standing Committee on External Affairs and National Defence (1968-1986), the Standing Committee on External Affairs and International Trade (1986-1993), and most recently as the Standing Committee on Foreign Affairs and International Trade (1993-present). See

possesses only a feeble influence in this process.² As such, representations to Parliamentary Committees were unlikely to exert direct influence on Canadian trade policy.

This is not to say that business and government did not interact in the field of trade policy. Nossal notes that in the 1970s, Canadian delegations to international negotiations on tariffs “featured regular participation by those whose concrete interests were going to be affected by the outcome of the talks.”³ Moreover, during the Tokyo Round, the government established the Canadian Trade and Tariffs Committee (CTTC) that served a liaison function, receiving briefs from industry. But although “the CTTC represented a significant advance in terms of input and feedback mechanisms over what had existed between government and industry in the Kennedy Round [of multilateral trade negotiations]”,⁴ the private sector deemed inadequate the level of its involvement in trade policy-making. As Doern and Tomlin state, “business interests were dissatisfied with the level of industry-specific advice that had been secured during Canadian preparations for the Tokyo Round.”⁵

Kim Richard Nossal, *The Politics of Canadian Foreign Policy, Third Edition* (Scarborough: Prentice-Hall Canada, 1997), 278-279.

² Nossal, *The Politics of Canadian Foreign Policy*, 174-176, 265-266.

³ Ibid, 108.

⁴ Gilbert R. Winham, *International Trade and the Tokyo Round Negotiations* (Princeton, N.J.: Princeton University Press, 1986), 335.

⁵ G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991), 110.

This state of affairs was symptomatic of business-government consultations writ large in Canada during the 1970s and into the 1980s. Banting notes business-government consultations tended to be decentralized, fragmented and informal, and "marked as much by conflict as by consensus."⁶ Banting ascribed much of this pattern to the context for consultation, particularly the federal distribution of authority in Canada.⁷ As noted in Chapter 2, federalism marks Canada's consultative context. Federal-provincial divisions of authority tend to favour fragmented over centralized consultative processes.

Canada's fragmented, pluralistic and competitive associational system also stymies the development of centralized regularized consultations. The diversity in sectoral and regional interests, as well as the diversity in interests resulting from the extent of foreign ownership in Canada, can prohibit the business community from developing a unified position on public policy issues. The extent of foreign direct investment in the Canadian economy, for example, can challenge the development of a strong consensus position between domestic and foreign-controlled firms where their interests diverge. At the extreme, it can and does fuel the creation of separate business

⁶ Keith G. Banting, "The State and Economic Interests: An Introduction," in Keith G. Banting, ed., *The State and Economic Interests*, Royal Commission on the Economic Union and Development Prospects for Canada Vol. 32 (Ottawa: Supply and Services, 1986), 16.

⁷ Banting also notes that the political relationships among business, labour, and government hinder centralized consultation mechanisms in Canada, particularly the development of corporatist structures. Given this study's focus on business and government only, this section only elaborates on Banting's discussion of the consequences of dispersed authority for patterns of consultation.

associations in a single sector representing the distinctive interests of Canadian versus foreign investors.⁸

The frequent result of these various features of Canada's corporate sector is that with no peak association representing business as a whole, the private sector "tends to speak with many voices."⁹ As such, Canada's private sector associational system tends to deal best with issues at the sectoral and sub-sectoral levels, with the most regularized and comprehensive consultations taking place at these levels.¹⁰

Attempts to mount large-scale comprehensive consultations with business in Canada are rare. As Banting notes, "There have been few attempts to sustain a structured, comprehensive dialogue between the public and private sectors."¹¹ In the years preceding the CUSFTA, the federal government undertook the Tier I/Tier II consultations, the most elaborate and ambitious formal consultation exercise between the

⁸ Banting, "The State and Economic Interests," 18. The cultural industries sector displays this pattern of separate business associations for domestic and foreign-owned firms, with, for example, distinct associations in the book publishing and film distribution sectors. It bears noting that in the cultural industries sector, where there are restrictions or outright prohibitions on foreign ownership and control in the broadcasting and publishing sectors, foreign direct investment may influence business-government consultations in a somewhat different manner. On the Cultural Industries SAGIT, for example, every member firm is represented by Canadians or Canadian interests. As Chapter 7 explains, the members of the SAGIT have actively and successfully opposed the appointment of members from foreign multinational corporations. The SAGIT consultations in the cultural industries sector, therefore, are somewhat unique in that they exclude direct representation from foreign investors.

⁹ Ibid, 18.

¹⁰ William D. Coleman, "Canadian Business and the State" in Banting, *The State and Economic Interests*, Chapter 5.

¹¹ Banting, "The State and Economic Interests," 24.

federal government and private interests ever mounted in Canadian history.¹² Launched in the late 1970s, the consultation consisted of two consultative tiers, the first, 23 industry sector task forces examining the major sectors of Canadian manufacturing, and the second, an industry-wide tier to synthesize the work of the sectoral task forces. Both tiers comprised business and labour representatives, with federal and provincial officials participating as observers.

The breadth of the Tier I/Tier II consultations extended far beyond trade policy matters, encompassing such issues as taxation, foreign ownership, research and development, and labour relations, and they laid the basis for future consultations. In the conclusion of their evaluation of this consultative exercise, Brown and Eastman (with Robinson) note, "The involvement of manufacturing firms and unions in a review of federal and provincial industrial policy in 1978 was a significant step towards further consultative mechanisms with the private sector."¹³ Indeed, one of the participants interviewed for this doctoral study viewed the SAGITs as a continuation or a natural extension of the Tier I/Tier II consultations, noting that "the mechanism was there."¹⁴

¹² Douglas Brown and Julia Eastman, with Ian Robinson, *The Limits of Consultation: A Debate Among Ottawa, the Provinces and the Private Sector on Industrial Strategy* A Discussion Paper Prepared for the Science Council of Canada (Ottawa: Science Council of Canada, 1981), 9.

¹³ Ibid, 190.

¹⁴ Interview 1322. This opinion ran contrary to the more widespread view in the empirical literature and in primary research conducted for this study that the Canadian government modeled the ITAC-SAGIT mechanism after the American private sector advisory system for trade negotiations.

Following on the heels of the Tokyo Round Canadian Trade and Tariffs Committee and the Tier I/Tier II consultations, the SAGITs formalized and systematized industry participation in the trade policy-making process. The groups represented a marked departure from the traditionally unstructured, informal, and episodic consultations with business on broad matters of economic and industrial policy and on trade policy in particular. When the government established the SAGITs, it announced the following policy with respect to consultation on economic matters:

“The Government of Canada is committed to rebuilding the bridges of dialogue and consultation between Ottawa and the rest of Canada. It is looking for collective, and not unilateral effort. It perceives this to be the key to economic renewal and is determined to act on this belief. Since our economy is heavily dependent on exports, one of the main topics for discussion in this dialogue is international trade.”¹⁵

The government identified the SAGITs, along with the International Trade Advisory Committee (described below) as “The Means” of pursuing the above policy. The government clearly viewed the SAGITs as a significant departure from previous consultative practices in the trade policy field, stating, “The ITAC [International Trade Advisory Committee] and the SAGITs which report to the Minister for International Trade were set up to ensure the broadest and most extensive process of consultation between the private sector and the government in Canadian trade history.”¹⁶

¹⁵ Minister for International Trade, “SAGIT,” *Communiqué No. 80* (April 25, 1986), Backgrounder, 1.

¹⁶ Minister for International Trade, “Minister for International Trade Meets with International Trade Advisory Committee (ITAC),” *Communiqué No. 178* (October 21, 1986), 2.

Two key factors in the domestic and international environment drove this choice. Domestically, as already noted, in the period preceding the CUSFTA negotiations, the private sector deemed inadequate its involvement in the trade policy-making process. Internationally, mounting American protectionism in the operation of US trade law in the first half of the 1980s¹⁷ combined with the recession in this same period to generate support among many broad-based industry groups for a comprehensive bilateral free trade agreement.¹⁸ This fuelled private sector interest in the negotiating process.

The federal government established the new consultative machinery for the CUSFTA negotiations in direct response to these demands, on the one hand, business' dissatisfaction with the level of consultation during the Tokyo Round, and on the other, private sector interest in securing satisfactory negotiation outcomes in the upcoming negotiations. The remarks of James Kelleher, Minister for International Trade, announcing the beginnings of the new consultation system reflect both of these factors: "The decision to establish a Trade Advisory Committee responds to the wish of the business community and others to have a more formal mechanism for regular consultation on trade matters with the Government. The establishment of this

¹⁷ For a detailed examination of the application of US trade law to deter Canadian exporters between 1980 and 1986, see Alan M. Rugman and Andrew D.M. Anderson, *Administered Protection in America* (New York: Croom Helm, 1987).

¹⁸ Alan M. Rugman and Andrew Anderson, "Business and Trade Policy: The Structure of Canada's New Private Sector Advisory System," *Canadian Journal of Administrative Science* 4, 4 (1987), 368.

consultative process will meet our urgent need to prepare for the trade development and negotiation challenges that lie ahead.”¹⁹

The ITAC-SAGIT Structure:

The American model adapted to Canadian circumstances

In designing the new trade policy consultation mechanism, the federal government looked to the American consultation model. Following a discussion with American officials about the consultative system in the United States, James Kelleher, then Minister for International Trade, pushed for its implementation in Canada.²⁰ The American system, established by Congress during the Tokyo Round of GATT negotiations, was a multi-level consultation mechanism. It consisted of three key inter-related bodies: the Advisory Committee on Trade Negotiations (ACTN), general committees, and specialized committees, as shown in Figure 4 below.²¹

Figure 4: Structure of the American Trade Advisory System

¹⁹ Department of External Affairs, “Minister for International Trade Appoints Chairman of Trade Advisory Committee,” *Communiqué No. 129* (September 19, 1985), 1.

²⁰ Doern and Tomlin, *Faith and Fear*, 110.

²¹ The discussion of the American system draws primarily from Rugman and Anderson, “Business and Trade Policy,” 370-371.

As the figure shows, the ACTN stood at the top of the process. Composed of 45 business and labour representatives appointed by the President, the Committee represented the main interests and regions of the United States. It included the leaders of major domestic and multinational corporations, the presidents of eight key labour unions, as well as representatives from the legal, academic, small business, and consumer communities. Chaired by the United States Trade Representative, it reported directly to Congress (in the case of the Tokyo Round, recommending Congress accept the Tokyo Round agreement).

The general and specialized committees consisted of approximately 1,000 members, and supported the work of the ACTN. The general policy committees advised the ACTN on broad policy issues such as labour, investment, and agriculture.²² The general committees, in turn, received support from specialized committees such as the Labor Policy Advisory Committee, the Labor Sector Advisory Committees, and the Industrial Policy Advisory Committee. The latter committee, IPAC, consisted of 27 specialized Industry Sector Advisory Committees (ISACs), based on the 27 standard industrial codes used in statistical analysis of the US manufacturing sector. The ISACs produced sector-specific advice, which was then channeled to the ACTN in the development of the latter's recommendations to Congress. IPAC and ISAC members also travelled on a number of occasions to the ongoing GATT negotiations in Geneva.

As shown in Figure 5 on the following page, Canada adopted the core concepts of the American system -- a peak committee to provide broad-based advice, with general committees to advise on cross-cutting trade issues and specialized committees to address narrower industry sector concerns. In Canada, the peak committee was the International Trade Advisory Committee (ITAC). Composed initially of 40 influential individuals representing a range of sectors and regions, its objective was to advise the government on broad questions of market access and trade promotion: "The International Trade Advisory Committee (ITAC) will deal with broad national issues relating to international trade access and marketing matters."²³

The government clearly intended the ITAC to serve as a general trade policy advisory channel, rather than a forum for the representation of company-specific interests. Members of the ITAC "serve in their individual capacities, not as representatives of specific entities or interest groups."²⁴ The first roster of ITAC members included the chief executive officers of major corporations of the time, including Bombardier, Alcan, the SNC Group, Algoma Steel, Du Pont Canada, TransCanada Pipelines, and Atco. The ITAC also included leaders of smaller corporations, a number of researchers and academics, and individuals representing

²² In Canada, with the exception of the Canadian Federation of Labour, the major unions did not initially participate in the consultation process given their firm opposition to the bilateral free trade initiative.

²³ Department of External Affairs, "Minister for International Trade Announces Make-Up of International Trade Advisory Committee," Background, "International Trade Advisory Structure," 1.

²⁴ Ibid.

consumer and labour interests (the presidents of the Consumers Association of Canada and the Canadian Federation of Labour, respectively).

Figure 5: Structure of the Canadian Trade Advisory System

ITAC task forces or working groups constituted the general policy committees in Canada are. Made up of ITAC members, they examined cross-cutting trade policy issues. In its first year, the ITAC convened 12 task forces to produce reports on such major issues as adjustment, trade in services, investment, government procurement, and interprovincial barriers to trade.²⁵

Canada's specialized industry sectoral committees are the Sectoral Advisory Groups on International Trade (SAGITs). Their purpose is to provide sector-specific advice to the government and, in contrast to the ITAC, serve as a forum for sectoral interest representation: "The SAGIT will interact with the Government to ensure sectoral views are fully taken into account in international trade matters. ... the participants will

²⁵ Rugman and Anderson, "Business and Trade Policy," 373.

be expected to provide advice as representatives of their sectors or interests.”²⁶ The federal government initially created 15 SAGITs, representing the key industry sectors likely to have an interest in Canada’s upcoming bilateral and multilateral negotiations. These included Groups in the forestry, energy, financial services, communications, and arts and cultural industries. A full listing of the SAGITs and their composition appears in the section below, which explores in greater detail the structure and functioning of the SAGITs.

While the ITAC and SAGITs, were, respectively, the Canadian counterparts of the ACTN and the ISACs in the United States, there were important differences in the structure and functioning of Canada’s trade policy consultation machinery in relation to its American counterpart. Canada adapted the American multi-level model in five important respects.

First, in contrast to the American system, the ITAC-SAGITs provide advice exclusively to the executive rather than to the legislative and executive branches of the Canadian government. As noted in the January 1986 Communiqué announcing the membership of the ITAC and the forthcoming SAGITs, “The purpose of the international trade advisory committee system is to provide a two-way flow of information and advice

²⁶ Ibid.

between the Government and business, labour and other groups on bilateral and multilateral trade policy issues, as well as trade development.”²⁷

The ITAC-SAGITs work directly with the trade bureaucracy and report to the Minister for International Trade, rather than to Parliament, as would be the case if they followed the American model. As explained by the government, “The ITAC and SAGIT will work closely with Mr. Simon Reisman the Ambassador and Chairman of the Preparatory Committee for the Trade Negotiations. The ITAC and SAGIT will report to the Minister for International Trade, James Kelleher.”²⁸ While many ITAC-SAGIT members relied on their own organizations for expert advice and research, the groups received secretariat support from the trade bureaucracy, including, at the time of the CUSFTA, assistance from the Deputy Minister for International Trade, support from the Department of External Affairs’ Trade Advisory Secretariat, and other members of the federal bureaucracy (predominantly the trade bureaucracy but also from other relevant government departments).²⁹

A second difference pertains to the reporting relationship of the SAGITs. While in the American model the industry sector groups reported to Congress through the peak committee (the ACTN), in Canada, the SAGITs do not report through the ITAC to the

²⁷ Department of External Affairs, “Minister for International Trade Announces Make-Up of International Trade Advisory Committee,” *Communiqué No. 03* (January 9, 1986), 2.

²⁸ Department of External Affairs, “Minister for International Trade Announces Make-Up of International Trade Advisory Committee,” Background, “International Trade Advisory Structure,” 1.

²⁹ Rugman and Anderson, “Business and Trade Policy,” 372.

government, but rather, report directly to the Minister for International Trade. In the Canadian model, there appears to be greater formal contact between the SAGITs and the executive and trade bureaucracy. The Minister for International Trade attends SAGIT meetings as necessary, and during the CUSFTA negotiations, members of the then Department of External Affairs, other trade-related departments, and the Trade Negotiations Office (TNO) – including Simon Reisman himself – attended SAGIT meetings. SAGIT functioning is examined more closely further on in this chapter.

A third difference between the Canadian and American consultation mechanisms relates to the chairmanship of the groups. In the US, the United States Trade Representative chaired the ACTN, while in Canada, as noted above, the ITAC chair was a private sector representative. This disparity may relate to the different reporting relationships of the Canadian and American groups. The more visible presence of the USTR in the United States may have been a means of providing the Administration a greater measure of control over a consultative process that reported directly to Congress, rather than to the White House.

The fourth difference relates to the criteria and process for selection of ITAC and SAGIT members. While regional, labour, consumer and academic representation are important criteria in both countries, ITAC-SAGIT membership selection differs from the American model of Presidential partisan appointments. In Canada, experience and reputation are meant to be the overarching selection criteria, rather than political or

partisan considerations: "...prominent members of the business, labour, consumer, academic, research and cultural communities have been appointed to the ITAC. They represent all regions of Canada, and are experienced and knowledgeable in trade matters. ... The Sectoral Advisory Groups will be expected to be the depository of expertise and knowledge in their respective sectors, as well as on trade matters..."³⁰

Having said this, however, the list of potential members for the first ITAC was vetted (and pared down) by both the Minister for International Trade and the Prime Minister's Office,³¹ suggesting that partisan and/or political considerations may also represent important criteria for membership selection. Indeed, one of the former SAGIT members interviewed for this study self-identified as a supporter of the Mulroney Conservatives, and noted that his³² membership in the SAGIT was not renewed with the change of government to the Chrétien Liberals in 1993: "I was out with the Tories".³³ A more detailed discussion of membership criteria for the SAGITs appears below.

The measure of ambiguity that surrounds membership criteria for the ITAC and SAGITs seems also to characterize the process of member selection. At the time of the Canada-United States Free Trade Agreement, for example, academic research examining

³⁰ Department of External Affairs, "Minister for International Trade Announces Make-Up of International Trade Advisory Committee," 1, Backgrounder, "International Trade Advisory Structure," 2.

³¹ Rugman and Anderson, "Business and Trade Policy," 372.

³² While both men and women served on the SAGIT during the time period of this investigation, in order to preserve the confidentiality of SAGIT members (and others) interviewed for this study, all references to individuals employ the masculine form.

³³ Interview 1308.

the creation of the initial ITAC-SAGIT groups renders somewhat differing accounts of the appointment process. In the case of the ITAC, there is relative consistency in descriptions of membership selection. Moroz maintains that ITAC Chair Walter Light (former Chairman of Northern Telecom) “had a significant influence in determining the final list of participants,”³⁴ and Rugman and Anderson state that Light “selected the membership and proposed his list to the trade minister and PMO.”³⁵

Where greater discrepancy arises is in the membership selection process for the SAGITs. Rugman and Anderson assert that “for the SAGITs the members were selected by the SAGIT chairpersons, following the precedent set by the composition of the [initial] ITAC membership.”³⁶ Meanwhile, Doern and Tomlin state that in selecting SAGIT members, “The government canvassed more than 80 trade associations, as well as provincial governments, for suitable persons.”³⁷ Government statements suggest that the SAGIT membership selection process fell somewhere in between these two accounts. When the government announced the appointment of SAGIT chairpersons, it stated that “members of the SAGIT will be appointed by the Minister in the next few weeks following consultations with the chairpersons.”³⁸ The empirical evidence collected for this study suggests that in the years subsequent to the creation of the SAGITs, the formal

³⁴ Helen Moroz, *The Changing Constellation of State-Societal Relations in Canada: A Case Study of the Domestic Consultations Leading to the Canada-U.S. Free Trade Agreement*, (Kingston: Unpublished PhD thesis, Department of Political Studies, Queen’s University, 1996), 11.

³⁵ Rugman and Anderson, “Business and Trade Policy,” 372.

³⁶ Ibid.

³⁷ Doern and Tomlin, *Faith and Fear*, 113.

³⁸ Minister for International Trade, “SAGIT,” 1.

power of appointment resides with the Minister for International Trade, but public officials and existing SAGIT members have meaningful input into the selection of new members. Ultimately, however, the decision rests with the Minister's Office. The following portion of this chapter examines SAGIT membership selection more closely.

The final difference between the American and Canadian systems relates to the role of the groups following a trade negotiation. In the United States, the enabling legislation for the advisory system, the Trade Act of 1974, mandates the ACTN and each subsidiary advisory committee with providing an advisory opinion to Congress "as to whether and to what extent the Agreement promotes the economic interests of the United States and ... provides for equity and reciprocity."³⁹ This power to publicly pass judgment on the substance of the negotiations to the legislature does not exist in the Canadian advisory system. In the Canadian system, although the government may seek the advice of the groups on implementation of a negotiated accord, the groups have no institutionalized right to review and report on negotiation outcomes in the ratification period.

Moreover, under the Canadian system, the government is not bound to accept advice received in the consultations or to account for decisions not to follow recommendations received. In the American system, the Trade Act of 1974 obliged the USTR to "inform the Advisory Committees of failures to accept ... advice or

³⁹ As quoted in Winham, *International Trade and the Tokyo Round Negotiation*, 135. Winham ascribes Congressional approval of the Tokyo Round accords to the ACTN's endorsement of the agreements (310).

recommendations.”⁴⁰ The Canadian system clearly conferred less power to the groups in their advisory capacities. The groups possess no right to publicly comment on agreements the Canadian government negotiates and the government need not account for failure to accept ITAC-SAGIT advice or recommendations.⁴¹

THE STRUCTURE AND FUNCTIONING OF THE SAGITs

While the ITAC constituted an integral component of Canada's trade policy consultation mechanism, given this study's focus on consultations at the sectoral level, this section focuses on the structure and functioning of the SAGITs. The chief characteristics of the SAGITs that emerge from the analysis below are of an enduring, stakeholder-led, deliberative consultation mechanism -- precisely the sort of mechanism that responds to the criticisms of contemporary consultation processes, namely, that they tend to be ad hoc, episodic, government-led, and that information flows in one direction only.⁴² What follows below details not only the original structure and functioning of the SAGITs, but also formal and informal modifications to the SAGIT process over the time frame of this study (1985-1999). The timeline in Appendix B summarizes key SAGIT milestones since the group's inception.

⁴⁰ As quoted in Winham, *International Trade and the Tokyo Round Negotiation*, 135.

⁴¹ ITAC-SAGIT members could of course publicly comment on trade agreements in their own individual capacities, but the Canadian system prevents the ITAC and SAGITs from commenting as a group in the public domain. This is because their terms of reference limit their purpose to providing confidential advice to the Minister for International Trade. As such, the Minister must approve the public release of group communications.

Purpose. As noted above, the SAGITs' purpose is to provide sector-specific advice to the federal government on international trade matters. Over time, the government narrowed the scope of SAGIT advisory services from their initial focus on market access and trade promotion⁴³ to their current, more limited focus on market access issues only.⁴⁴ Originally, the groups advised the government on both market access and trade development issues. This changed in the late 1990s, however, with the creation of Team Canada Inc. (TCI).⁴⁵ TCI is a network of federal departments and agencies that works with the provinces, territories and Regional Trade Networks in each province, to provide a single-window service to assist Canadian exporters. The establishment of TCI effectively narrowed the range of issues on which the SAGITs advise because of one of its key elements, the Trade Team Canada Sectors (TTCS). The TTCS "bring government and industry together to coordinate national trade development planning and activities in key industries."⁴⁶ These groups became the federal government's focal point for industry

⁴² Susan D. Phillips with Michael Orsini, *Mapping the Links: Citizen Involvement in Policy Processes* (Ottawa: Canadian Policy Research Networks Discussion Paper No. FJ21, April 2002), iii.

⁴³ Department of External Affairs, "Minister for International Trade Announces the Formation of the Sectoral Advisory Groups and [sic] International Trade (SAGIT)," *Communiqué No. 21* (February 3, 1986) Backgrounder, "International Trade Advisory Structure."

⁴⁴ While recent government documentation on the SAGITs states that the groups advise the Minister for International Trade on "federal government policy pertaining to trade" (Department of Foreign Affairs and International Trade, "Sectoral Advisory Groups"), numerous sources interviewed for this study stated that the SAGITs no longer provide trade promotion and development advice. The government now seeks private sector advice on these issues through Team Canada Inc.

⁴⁵ Department of Foreign Affairs and International Trade, "Marchi Announces Team Canada Inc.," *News Release No. 158* (October 6, 1997).

⁴⁶ Industry Canada website: <http://ttcs.ic.gc.ca/ttc/ttchome.nsf/vHTML/front-e.html> (accessed 19 June 2002). The industry sectors include aerospace and defence, the automotive industry, bio-industries, environmental industries, plastics, and services.

involvement in trade promotion and as such the SAGITs no longer formally advise the government on trade development/trade promotion issues.

The government clearly intended the SAGITs to serve as a deliberative consultation channel, promoting dialogue between SAGIT members and the government.

Government statements about the role and purpose of the SAGITs at and since their inception demonstrate this aim:

In 1986, at their inception: "The role of the [ITAC-SAGIT] system is to provide a two-way flow of information and advice between the government and the private sector on international trade matters."⁴⁷

In 1989, following the CUSFTA: "The purpose of the [ITAC-SAGITs] is to provide a two-way flow of information and advice between the government and the Canadian private sector on international trade matters."⁴⁸

In 1995, following the NAFTA: "The SAGITs have provided an invaluable source of input into the formulation of Canadian trade policy, particularly during the trade negotiations of recent years. With an ever-growing range and number of trade issues affecting the success of Canadian interests abroad, there is a continuing need for frequent, open dialogue between the government and the private sector."⁴⁹

In 1999, prior to the Third WTO Ministerial Conference: "Central to the SAGIT process is the open exchange of ideas and information between the SAGIT members and government."⁵⁰

⁴⁷ Department of External Affairs, "Minister for International Trade Announces the Formation of the Sectoral Advisory Groups and [sic] International Trade (SAGIT)," Background, "International Trade Advisory Structure."

⁴⁸ Minister for International Trade, "Minister for International Trade, John C. Crosbie, Announces Composition of the New Sectoral Advisory Groups on International Trade (SAGITs)," *News Release No. 015* (January 27, 1989), 1.

⁴⁹ Department of Foreign Affairs and International Trade, "MacLaren Names New Chairpersons and Announces Restructuring of Sectoral Advisory Groups," *News Release No. 9* (January 16, 1995), 1.

⁵⁰ Department of Foreign Affairs and International Trade, "Sectoral Advisory Groups on International Trade (SAGITs)," <http://www.dfait-maeci.gc.ca/tna-nac/sagit-en.asp>, document created May 1999.

In addition to their stated purpose as a deliberative channel of consultation, the government also conceived of the SAGITs as an enduring consultation mechanism: "The purpose in establishing this *permanent* advisory committee system is to provide an *on-going*, confidential, two-way flow of information and advice between the Government and the private sector on international trade matters."⁵¹

It does not appear, however, that the government intended the ITAC-SAGIT consultation process to replace or displace other channels of trade policy consultation or other means of private sector interest representation on trade matters. While the government stated that the ITAC-SAGIT structure was the most comprehensive trade consultation mechanism in Canadian history, it noted that, "the structure is, however, *in addition* to the consultation and dialogue that will continue between government and the private sector, both with individual companies and with associations."⁵²

This being said, during the CUSFTA and the Uruguay Round negotiations, the government evidently sought to use the new consultative groups to aid, synthesize and/or filter private sector representations. "ITAC/SAGITs are the main channel for communicating the views of the Canadian private sector to the Government on these two negotiations [CUSFTA and the Uruguay Round]. In this regard, private sector submissions on these negotiations are directed to the appropriate SAGIT, and through the

⁵¹ Minister for International Trade, "Minister for International Trade Announces Make-up of New International Trade Advisory Committee," *News Release No. 179* (August 17, 1988), Background Information, "The International Trade Advisory Committee System," 1. Emphasis added.

Sectoral Advisory Group to the Government.”⁵³ This is consistent with Doern and Tomlin’s assertion that the SAGITs played a dual role, “as a source of industry advice, and a buffer against interest group pressures.”⁵⁴

Perhaps more importantly, the coexistence of the ITAC-SAGIT structure alongside government dialogue with individual companies and associations points to the potential flexibility the consultation mechanism afforded the government. While the government would listen to representatives in the ITAC and SAGITs, it was not obligated to act on the advice of either of these groups. As hypothesized in Chapter 2, perceptions about the relative policy influence of the groups might materially affect the level and nature of participation of members party to the consultations, inciting them to engage actively and collaboratively, where they perceived their participation might influence policy, and to disengage or passively engage and conflict with the government, where they believed the consultation would result in little policy influence.

Accountability. As mentioned previously, the SAGITs report to the Minister for International Trade.⁵⁵ The Minister possesses the power of appointment for all SAGIT members and members serve at his discretion.

⁵² Minister for International Trade, “SAGIT,” Backgrounder, 4, emphasis added.

⁵³ Minister for International Trade, “Minister for International Trade Announces Make-Up,” “Background Information: The International Trade Advisory Committee System,” 1.

⁵⁴ Doern and Tomlin, *Faith and Fear*, 112.

⁵⁵ The agricultural SAGIT also reports to the Minister of Agriculture.

Industry Sectors Represented. The SAGITs represent the industry sectors most likely to be affected by international trade negotiations. As such, both the number and sectoral representation of the groups changes over time. At their inception, there were fifteen SAGITs representing various segments of the resource, manufacturing, and service sectors. In keeping with the profile of the Canadian economy, the greatest proportion of SAGITs encompassed the resource and manufacturing sectors. These ranged from the SAGITs on chemicals and petrochemicals; energy products and services; and minerals and metals; to the SAGITs on automotive and aerospace; industrial, marine and rail equipment; to those on agriculture, food and beverage; fish and fish products; and forest products; to those on apparel and fur; consumer and household products; and textiles, footwear and leather. In the service sector, were the SAGITs on arts and cultural industries; communications, computer equipment and services; financial services; and on general services. While the foregoing classification is admittedly crude – for example, the computer equipment segment of the communications, computer equipment and services SAGIT could be classified as manufacturing – it allows for a rough comparison of sectoral representation over time.

Following this initial slate of SAGITs in 1986, the Minister for International Trade reconstituted the groups in 1989, reducing the number of SAGITs from fifteen to thirteen. In this second round of the groups, the department combined a number of the existing SAGITs in related sectors. The government combined the SAGIT on energy products and services and the SAGIT on chemicals and petrochemicals to create the

Energy, Chemicals and Petrochemicals SAGIT. Likewise, the government joined the SAGIT on the automotive and aerospace industries, and the industrial, marine and rail industries to form the Industrial and Transportation Equipment SAGIT.

A similar process of adaptation took place in 1995, when the Minister for International Trade, Roy MacLaren, "restructured and streamlined the groups to reflect current domestic and international realities."⁵⁶ The number of SAGITs increased again to fifteen, only by this time the industrial complexion of the groups began to reflect the growing impact of technology on the Canadian economy as well as the emergence of new industrial sectors. While the department retained nine of the original resource and manufacturing SAGITs (agriculture, food and beverages; apparel and footwear; household products; energy, chemicals and plastics; fish and sea products; forest products; mining, metals and minerals; textiles, fur and leather; and transportation equipment), it created a new SAGIT in the sector, the Advanced Manufacturing Technologies SAGIT.

In the service sector, the department discontinued the SAGITs on financial services and general services, creating three new SAGITs in the service sector: one for the business, professional and educational services, one for transportation services, and one for medical and health care products and services (this final group of course included both manufacturing and service components).

⁵⁶ Department of Foreign Affairs and International Trade, "MacLaren Names New Chairpersons," 1.

In addition to these modifications, DFAIT also renamed two of the existing service sector SAGITs. The Arts and Cultural Industries SAGIT became the Cultural Industries SAGIT (the ensuing chapters consider the rationale and implications of dropping the term “arts” from the SAGIT title) and the SAGIT on communications, computer equipment and services became the Information Technology and Telecom Products and Services SAGIT. This name change likely reflected the impact of technological change and convergence (discussed in the previous chapter) on the industrial structure of this sector.

The department restructured the SAGITs again in the period following the changes noted above. DFAIT created a SAGIT on Canada/USA Border Issues (dismantled in 1999) and renewed the General Services SAGIT, following the discontinuation of a number of the sector-specific services SAGITs. In 1999, the total number of active SAGITs stood at twelve, with many of the original resource and manufacturing SAGITs represented in this final group (agriculture, food and beverage; apparel and footwear; fish and sea products; forest products; mining, metals and minerals; and textiles, fur and leather).⁵⁷ In the services sector, the department retained two of the existing SAGITs (the Cultural Industries SAGIT, and the Medical and Health Care Products and Services SAGIT), added a new SAGIT on the environment, recreated the general services SAGIT, and renamed the SAGIT on information technology and

⁵⁷ The use of the term “final group” refers to the final group of SAGITs considered for purposes of this study. In February 2003, DFAIT’s website listed a total of twelve SAGITs representing the same industry sectors as those listed above (<http://www.dfait-maeci.gc.ca/tna-nac/sagit-en.asp>).

telecom products and services, the Information and Communications Technology SAGIT.

Membership. As noted above, the Minister for International Trade appoints members, who serve for two-year renewable terms. As discussed in the following chapters, the capacity to renew member terms can generate considerable continuity in the membership of any one SAGIT. SAGIT membership consists primarily of senior business executives, with some representation from industry associations, labour groups, the environment, nongovernmental organizations, and academia.⁵⁸ Large corporations and prominent business leaders make up the vast majority of SAGIT members, with representation from other sectors accounting for far fewer members.

Table 4 on the following page shows the total number of members per SAGIT and the distribution of SAGIT membership at the time of the CUSFTA negotiations. As the table shows, in virtually all SAGITs, the number of independent business representatives far outweighed the number of representatives of boards, associations and cooperatives, and the number of union or other representatives.

⁵⁸ Department of Foreign Affairs and International Trade, "Sectoral Advisory Groups."

Table 4: Distribution of SAGIT Membership at CUSFTA

SAGIT	Number of Members*	Independent Business Representatives	Representatives from unions, associations, boards, cooperatives and other representatives
Agriculture, Food & Beverage	37	10	27
Forest Products	18	16	2
Automotive & Aerospace	17	13	4
Fish & Fish Products	16	8	8
Minerals & Metals	16	12	4
Energy Products & Services	16	13	3
Industrial, Marine & Rail Equipment	16	13	3
Financial Services	16	15	1
Apparel & Fur	15	10	5
Communications, Computer Equipment & Services	15	14	1
General Services	14	10	4
Arts & Culture Industries	14	7	7
Chemical & Petrochemicals	13	12	1
Textiles, Footwear & Leather	13	11	2
Consumer & Household Products	12	9	3
Total	248	173	75
Percent	100	69.8	30.2

*Does not include SAGIT chair

Source: Adapted from Alan M. Rugman and Andrew Anderson, "Business and Trade Policy: The Structure of Canada's New Private Sector Advisory System," *Canadian Journal of Administrative Science* 4, 4 (1987), 375.

In only one of the fifteen SAGITs – the Agriculture, Food and Beverage SAGIT – did representatives from the second category outnumber independent business representation. In all others, the number of business representatives was either equal to (the Fish and Fish Products SAGIT and the Arts and Cultural Industries SAGIT) or far exceeded (all other SAGITs) the number of association, labour or other representatives. Stated in aggregate, of the 248 members of the SAGITs in 1986, 173 or 70% of these members were independent business representatives. The remaining thirty percent of

members hailed from unions, boards, associations, cooperatives, or other milieus (e.g., academics and consumer representatives).

Although the government invited labour representatives to join the process, most unions refused to participate during the CUSFTA negotiations due to their firm opposition to the free trade agreement.⁵⁹ The Canadian Labour Congress (CLC), the country's largest national union, refused to join the process because the consultations did not accord labour equal status to business.⁶⁰ As a result, during the CUSFTA negotiations, six (subsequently eight) of the SAGITs had no union representatives among their members. In the coming years, however, labour began to participate more actively in the process. Following the negotiation of the CUSFTA, CLC President Shirley Carr, along with senior representatives from the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, the United Steelworkers of America, the National Union of Provincial Government Employees, and the United Food and Commercial Workers' International Union, joined the ITAC and the government named twenty-one new labour members to the SAGITs.⁶¹

⁵⁹ Rugman and Anderson, "Business and Trade Policy," 375. The Canadian Federation of Labour's President James McCambly was a notable exception, participating as a member of the ITAC.

⁶⁰ Moroz, *The Changing Constellation*, 12.

⁶¹ Minister for International Trade, "New Labour Members Named to International Trade Advisory Committee," *News Release No. 149* (June 21, 1989) and Minister for International Trade, "21 New Labour Members Named to Sectoral Advisory Groups on International Trade," *News Release No. 248* (October 17, 1989).

In addition to the membership criteria noted above, interviews conducted for this study reveal that there are three other relevant criteria for selecting the membership of each group. SAGITs must include representation from the main regions of Canada (mainly East, West, Ontario and Quebec), as well as reflect the linguistic duality of the country. Moreover, membership of an individual SAGIT must also represent the various industry subsectors of the industry in question, and include representation from smaller corporations in the sector. One SAGIT participant interviewed for this research indicated that as a bilingual member representing the interests of a particular cultural industries' subsector in Eastern Canada, part of the attractiveness of appointing him to the group was that he simultaneously "covered off" a number of key SAGIT member criteria.⁶² A further membership criterion is gender. Moroz quotes a former SAGIT member reflecting on why she believed she was appointed to the SAGIT: "That's simple, I was chosen because I'm a female president of a small business from the West."⁶³ Finally, as previously mentioned, partisan considerations also appear to play a role in the selection of SAGIT members.

Given the multiple criteria for SAGIT membership selection, creating and maintaining a representative SAGIT is a complex and challenging task -- one that several study participants likened to the appointment of a federal cabinet.⁶⁴ The multiple representation criteria can challenge attempts to create and maintain a SAGIT with the optimal level of expertise. As one participant noted, it can be difficult to locate a group

⁶² Interview 1307.

⁶³ Moroz, *The Changing Constellation*, 217 (footnote 1).

of potential SAGIT members that simultaneously meet the various representational requirements of the consultation process while also possessing the requisite sectoral expertise.

A further complexity of the process of membership selection pertains to the interdepartmental consultations preceding member appointments. While the Minister for International Trade has the formal power of appointment of SAGIT members, other ministers, senior officials, and existing SAGIT members participate in the process as well. Beyond the process of appointing the initial membership of the SAGITs described in the previous section, there is no formal government documentation or empirical literature on the precise nature of the selection process since that time.

When asked about the SAGIT membership selection process, many individuals interviewed for this study stated they were unaware of the process or described it as a “mystery” or a “black box”. Those who indicated they knew the process, stated that the responsibility for generating a list of potential SAGIT members resides with the departmental division within DFAIT responsible for providing secretariat support to the groups (at time of writing, the Trade Policy Consultations and Liaison Division, but titled variously throughout the time frame of this study, as described below). The processes leading to the development of this list and ministerial selection of the eventual members differ depending on whether the government is appointing a fresh slate of SAGIT

⁶⁴ Personal interviews with confidential and anonymous sources, files no. 1307 and 1315.

members or merely replacing SAGIT members who resign from the group or whose terms expire without renewal.

When the government selects a fresh slate of SAGIT members,⁶⁵ the process involves several phases, with different bureaucratic and ministerial players and different membership selection criteria at the fore during each phase. The first phase of the process involves inter-departmental consultation, in which the SAGIT secretariat of DFAIT develops a list of potential candidates in consultation with other relevant government departments. This can include other divisions of DFAIT or other departments relevant to the industry sector in question, for example, the Department of Canadian Heritage in the case of the Cultural Industries SAGIT. The secretariat contacts each department to request suggestions of potential SAGIT candidates and in each department consulted, public servants with sector-specific knowledge propose potential candidates. The Office of the Minister in these departments also proposes potential members. The primary criterion for prospective candidates at this stage is expertise, although the involvement of ministers' offices can result in the suggestion of candidates based on political or partisan considerations.

In the next phase of the process, the DFAIT division compiles the suggestions received and adds any potential candidates that it itself recommends. It then circulates

⁶⁵ The government has made three rounds of full SAGIT appointments, the first round upon the establishment of the SAGITs in 1986, the second round immediately following CUSFTA's entry into force in 1989, and the third in 1995, a year following NAFTA's entry in force.

the resulting list to the Deputy Ministers and Assistant Deputy Ministers at DFAIT, who themselves have the opportunity to add potential candidates. Expertise remains the chief criterion during this phase.

At this point, the list then proceeds to the Office of the Minister for International Trade, who forwards it to the ministers of line departments and to regional ministers. Activity during this phase takes place at the ministerial and ministerial staff level. Officials with in-depth knowledge of the industry (including the internal politics of the industry) work to narrow down the list of prospective candidates. At this final stage, ministers begin to bring political considerations, such as regional, gender and linguistic representation, to the fore. In this final stage, the Minister for International Trade selects the members of the SAGIT in question.

The foregoing description applies to the selection of an entirely fresh slate of SAGIT members. The more common occurrence of membership selection takes place when a SAGIT member leaves the group mid-term (for example, because of a change of job that takes him out of the sector) or when their membership term expires. Under these circumstances, the process is less elaborate than that outlined above. Generally, the SAGIT secretariat, either on its own or in consultation with related government departments, the Minister's Office, and/or SAGIT members themselves submits a list of three to five potential replacements to the Minister for International Trade. The Minister then selects and appoints the replacement from this list. As the coming chapters describe,

this second, less elaborate, process of membership selection characterizes the Cultural Industries SAGIT since the mid-1990s. The Minister for International Trade tends to renew the terms of active SAGIT members, lets lapse the terms of inactive members, and existing members have a fair degree of influence in the selection process for new SAGIT members.⁶⁶

The number of members per SAGIT varies over time and depends on the size of the industry sector in question, but generally ranges from fifteen to twenty members. In 1995, a review of the SAGIT process under Minister for International Trade Roy MacLaren reduced the average number of SAGIT members from 20 to 17.⁶⁷ Members are not remunerated for their participation in the groups, although the federal government reimburses travel expenses to attend SAGIT meetings.

At the SAGITs' inception, members served in their capacity as representatives of their sectors or interests, but following a review of the SAGIT structure in 1998, "Members serve in their individual capacities and not as representatives of specific entities or interest groups."⁶⁸ This change has arguably had minimal implications, however, because Moroz found that SAGIT participants' views of the perspective they expressed in the consultations at the time of the CUSFTA negotiations differed from the government's mandate of appointing SAGIT members to represent the interests of their

⁶⁶ Interview 1311.

⁶⁷ Department of Foreign Affairs and International Trade, "MacLaren Names New Chairpersons," 1.

⁶⁸ Department of Foreign Affairs and International Trade, "Sectoral Advisory Groups."

firm or sector.⁶⁹ Although 50 percent of respondents in Moroz' study stated that they represented the opinion of their sector and 10 percent stated they expressed the perspective of their company, many SAGIT members also indicated that the opinions they expressed in the consultations represented their personal views, regional views, or the national interest (21 percent, 11 percent, and 23 percent, respectively).⁷⁰ A further change in the 1998 review related to transfer of membership. In some SAGITs, members frequently sent more junior level company representatives in their place. These individuals lacked a sufficient level of expertise and decision-making power in their organizations to dialogue with and advise the government on sectoral issues. Following the 1998 review, members may not send substitutes if they are unable to attend a SAGIT meeting.

Confidentiality of proceedings. As a deliberative consultation channel, one of the distinguishing features of the SAGITs is that they advise the federal government on a confidential basis. Although the initial government announcements establishing the groups in 1986 did not state that proceedings would be in confidence, Moroz notes that SAGIT meetings have proceeded in camera from the outset of the consultations.⁷¹ By August 1988, confidentiality was a stated feature of the SAGIT process: "The purpose in establishing this permanent advisory committee system is to provide an on-going, *confidential*, two-way flow of information and advice between the Government and the

⁶⁹ Moroz, *The Changing Constellation*, 217-218.

⁷⁰ Percentages do not add to 100 because respondents provided multiple responses.

⁷¹ Moroz, *The Changing Constellation*, 7, footnote 3.

private sector on international trade matters.”⁷² The proceedings continued in confidence up to the time of writing.

SAGIT members sign a security declaration affirming that they will respect the confidentiality of any sensitive information or material presented or discussed. Initially this declaration related only to the provision of sensitive information *by* the government,⁷³ but the scope of the meaning of confidentiality has broadened over time. Confidentiality now extends to the provision of confidential/sensitive information *to* the government. The security declaration does not specify the *source* of confidential information⁷⁴, which means that SAGIT members can share in confidence sensitive information/materials with one another and with the government.⁷⁵

SAGIT members’ security declarations stipulate that it is a contravention of the Official Secrets Act and/or the Government of Canada Security Policy if a SAGIT member: shares sensitive information/material with a third party, publishes or communicates such information without lawful authority, uses such information/material for other than authorized purposes, and/or uses such information for purposes outside the mandate of the SAGITs, in particular, in a way that would benefit themselves or a third

⁷² Minister for International Trade, “Minister for International Trade Announces Make-up,” Background Information, “The International Trade Advisory Committee System,” 1, *emphasis added*.

⁷³ See *Ibid*, 3.

⁷⁴ See Department of Foreign Affairs and International Trade, “Security Declaration,” (provided by the department, dated 11 May 1998).

party.⁷⁶ SAGIT members undertake to respect these confidentiality provisions both during and subsequent to their participation in the SAGITs.

The purpose of SAGIT confidentiality is to enable and encourage a more comprehensive flow of information between the government and SAGIT members, and between SAGIT members themselves. Confidentiality enables the government to grant participants access to sensitive information/material pertaining to the status and political dynamics of ongoing negotiations, or other sensitive trade matters. It also permits SAGIT members to share sensitive commercial information/material with the government and with other SAGIT members with less apprehension that the information would find its way into the public domain.

But although confidentiality can permit for a freer flow of information between the government and consultation participants, it can also place important limits on the government and the private sector. In the case of the latter, for example, it prohibits participants from placing SAGIT research or advice in the public domain. As the federal government notes, SAGITs “provide confidential advice from the private sector to the Minister for International Trade,” and as such, the groups cannot publicly release the advice provided without ministerial approval. Moreover, as noted above, they cannot

⁷⁵ Empirical evidence collected for this study supports this assessment. One of the SAGIT members stated that the confidentiality of proceedings enables him to relay confidential information to the government.

⁷⁶ Department of Foreign Affairs and International Trade, “Security Declaration.”

publicly release information received and information discussed in the context of the consultations.⁷⁷

Overall, participants viewed confidentiality as a relatively unimportant feature of the proceedings, noting, for example, that information the government provided as to the “state of play” of negotiations was generally available on the Internet.

Meetings. The frequency of SAGIT meetings noted in government documentation varied over the time frame of this study. In the CUSFTA period, the government noted that the groups would meet at least quarterly,⁷⁸ while in the period preceding the third WTO Ministerial Conference, the groups were to assemble three to four times per year.⁷⁹ Empirical evidence on the SAGITs suggests that the actual rate of SAGIT meetings bordered on four times per year, with more frequent meetings taking place during intense periods of negotiation. During the CUSFTA negotiations, for example, the groups met approximately every 6 weeks,⁸⁰ while in the early 1990s during the Uruguay Round, the groups convened approximately every two months.⁸¹

⁷⁷ This feature of the consultations meant that SAGIT interviewees participating in this study generally confined their remarks to the *process* rather than the *content* of SAGIT meetings. Where participants discussed issues related to the substance of the cultural industries in trade, they did so in their individual capacities, rather than in their capacities as SAGIT members. Appendix A further discusses this aspect of the study methodology.

⁷⁸ Minister for International Trade, “SAGIT,” Background, 1.

⁷⁹ Department of Foreign Affairs and International Trade, “Sectoral Advisory Groups.”

⁸⁰ Moroz, *The Changing Constellation*, 8.

⁸¹ Interview 1320.

As a deliberative consultative channel, it appears the government intended the SAGITs to have a fair degree of control to set their own agenda, but with the expectation that the groups respond to ministerial requests for information and advice on specific trade matters. As noted in the Communiqué announcing the original chairpersons of the SAGITs, "...the SAGIT [sic] are responsible for setting their own agendas as well as responding to issues on which the Minister seeks advice."⁸² This stakeholder-led feature of SAGIT agenda-setting continues to this day, although more recent government statements reveal a degree of power-sharing between the government and SAGITs in agenda development, "[SAGIT] agendas are developed by the Chair in consultation with government officials."⁸³

The content of SAGIT agendas reflects trade issues of the time, ministerial requests for advice on specific matters, as well as the availability of trade negotiators and other trade bureaucrats to appear before the group. At the time of the CUSFTA negotiations, for example, Moroz notes that the Chairperson of each SAGIT set the agenda with the input of SAGIT members, and meetings consisted of government briefings to the groups as well as discussions among SAGIT members on negotiations in their sector.⁸⁴ Officials from the Trade Negotiator's Office, the Department of External Affairs, and from other sector-related government departments briefed SAGIT members on the negotiations and answered their questions. All SAGIT members engaged in discussions of agenda items, and the groups established member sub-committees to

⁸² Minister for International Trade, "SAGIT," Backgrounder, 1.

⁸³ Department of Foreign Affairs and International Trade, "Sectoral Advisory Groups."

examine narrower sub-sectoral or specialized technical issues. The groups occasionally hired outside consultants to conduct research on issues for which SAGIT members and government officials lacked adequate expertise. SAGIT Chairpersons reported group recommendations to the Minister for International Trade.

Moroz found that the nature of SAGIT discussions during the CUSFTA negotiations varied from SAGIT to SAGIT.⁸⁵ In particular, her research revealed that there was greater conflict between SAGIT members and government officials in those sectors facing unwanted liberalization (e.g., secondary manufacturing in clothing and textiles). In addition, in those SAGITs where trade liberalization stood to benefit some industry sub-sectors while threatening others, she found that greater internal conflict between SAGIT members characterized the nature of participant involvement (e.g., the Agriculture, Food and Beverage SAGIT).

Moroz' assessment of the nature of SAGIT discussions aligns with Doern and Tomlin's examination of the operation of the Agriculture, Food and Beverage SAGIT and the Financial Services SAGIT during the CUSFTA negotiations.⁸⁶ With respect to the first, the authors describe the conflict within the SAGIT generated by the opposing

⁸⁴ Moroz, *The Changing Constellation*, 8-10.

⁸⁵ Ibid, 10-11. Moroz conducted personal interviews with a total of 52 SAGIT and ITAC members that served during the CUSFTA negotiations. The survey instrument included the following question, "How would you describe the dynamics of your SAGIT/ITAC? Were they consensus seeking or conflict oriented? Were there any specific conflicts? If so, how were they resolved?" (319).

interests of the food producing and food processing sectors of the industry. The former, opposed to the dismantling of Canada's supply management system through marketing boards, conflicted with the latter, who favoured phasing out supply management. Food processors feared that their sub-sector could not compete with American counterparts, who enjoyed lower produce prices in the unmanaged American marketplace. Because SAGIT membership was weighted more heavily with primary producers, Doern and Tomlin describe the situation of food manufacturers as "surrounded on the inside."⁸⁷

Conflict also characterized the work of the Financial Services SAGIT, but in this case the chief conflict erupted between SAGIT members and government officials. Members representing Canadian banks disagreed with trade negotiators over the extent of application of the principle of national treatment to the banking industry. In the words of Doern and Tomlin, "Long accustomed to good relations with government, the banks found themselves in an unusual position, on the outside looking in."⁸⁸

Bureaucratic Resources. The Department of Foreign Affairs and International Trade provides secretariat and research support to the SAGITs. When the government created the SAGITs, it noted that the department had responsibility for "co-ordinating ITAC and SAGIT meetings and for providing briefings to assist these committees in their

⁸⁶ Doern and Tomlin, *Faith and Fear*, 114-120. The authors also examine the sectoral politics in the energy sector (120-125), but do not speak directly to the dynamics of the Energy Products and Services SAGIT.

⁸⁷ Ibid, 114.

⁸⁸ Ibid, 118.

deliberations.”⁸⁹ More recent descriptions of departmental support to the groups mirrors this original conception of basic secretariat and briefing services, although in the contemporary period, the support division also bears responsibility for presenting SAGIT advice to departmental officials and the minister: “The SAGIT structure is served by Advisors from the Trade Policy Consultations and Liaison Division of DFAIT, who help to set the agenda, coordinate meetings, develop SAGIT work plans and ensure trade policy advice is presented to senior officials and the Minister.”⁹⁰

The secretariat division is a small unit, comprised of roughly ten DFAIT officials, led by a director-level public servant. While the lengthy tenure of one of its administrative assistants conferred considerable administrative continuity to the unit between 1991 and 1999, there is typically a higher rate of turnover in division leadership and staffing. Most leaders are rotational foreign service officers so leadership tenure generally spans at most two to three years. The core staff of the division responsible for the SAGITs, called SAGIT Advisors, also tend to spend relatively short periods of time with the unit, generally several years or less. In their capacities as SAGIT advisors, they provide administrative support for three to four SAGITs each. The Senior Advisor and Coordinator of the unit (as the directorship position was known at the time of the SAGITs’ inception), bore responsibility for organizing meetings of the groups, accounting for expenditures, as well as planning, coordinating and executing their interaction with government officials and the minister. The unit’s leader serves as a

⁸⁹ Minister for International Trade, “SAGIT,” Background, 4.

⁹⁰ Department of Foreign Affairs and International Trade, “Sectoral Advisory Groups.”

linchpin between the SAGITs, on the one hand, and trade negotiators and the Minister for International Trade, on the other.

The name of the secretariat unit, the breadth and depth of its responsibilities, and its hierarchical standing within the department have changed over time. Originally called the Trade Advisory Committee Secretariat, at time of writing it bore the name, the Trade Policy Consultations and Liaison Division. In its original form, the division's responsibility spanned only the ITAC-SAGIT machinery. At time of writing, the scope of the Trade Policy Consultations and Liaison Division extends to a broader range of consultation and liaison processes, including public consultations and provincial/territorial consultations. The unit also frequently serves as the main point of contact for other processes of consultation and outreach on trade policy issues.

In addition to this change in breadth of the secretariat's responsibility is a change in its depth of responsibility. While the core secretariat function of the unit remains, the department now also charges officials with ensuring senior officials and the Minister receive trade policy advice developed by the groups. That is, at their inception, the government stated that the Deputy Minister for International Trade and the Senior Advisor and Coordinator of the SAGITs would assist the groups in their work by coordinating ITAC-SAGIT meetings, by providing briefings to assist committees in their deliberations, and by making arrangements for the SAGITs to work directly with the

Trade Negotiations Office in relation to CUSFTA and multilateral negotiations.⁹¹ Meanwhile, currently, SAGIT Advisors “help to set the agenda, coordinate meetings, develop SAGIT work plans and ensure trade policy advice is presented to senior officials and the Minister.”⁹² But despite this broader and deeper responsibility, the division is roughly the same size as it was in the mid-1980s. As such, individual SAGITs may currently receive less secretariat support from DFAIT than they did in the past. Subsequent chapters examine this issue in the context of the Cultural Industries SAGIT.

With respect to its hierarchical position within the department, the unit has experienced a demotion of sorts. Originally, it occupied a privileged status within the department, reporting directly to the deputy minister, rather than being embedded within External Affairs’ existing departmental structure. Early division directors enjoyed a level of direct access to the deputy minister unparalleled in the following years. As Kukucha notes, the Trade Policy and Consultations Liaison Division is “not high” in DFAIT’s organizational hierarchy.⁹³ It is one of five divisions reporting through the Trade Policy II Bureau (Services, Investment and Intellectual Property) to the Assistant Deputy Minister of Trade, Economic and Environmental Policy who in turn reports to the Deputy Minister of Foreign Affairs. The Trade Policy II Bureau, for its part, is but one of close to a dozen units reporting to the ADM of Trade, Economic and Environmental Policy.

⁹¹ Minister for International Trade, “SAGIT,” Background, 4.

⁹² Department of Foreign Affairs and International Trade, “Sectoral Advisory Groups.”

⁹³ Chris Kukucha, “The Federal Provincial Committee System on International Trade CTRADE – Trigger for Constitutional Change?” (A Paper Prepared for the Conference “The Administration of Foreign Affairs: A Renewed Challenge?” École nationale

While the reasoning behind the embedding and demotion of the unit within DFAIT may simply reflect the institutionalization of the ITAC-SAGIT process over time, the shift may have been driven, at least initially, by intra-departmental political considerations. One of the early divisional directors reportedly sought greater deputy ministerial time and attention than the DM of the day wished to allocate. In response, the deputy minister demoted and embedded the division within External Affairs to break the division's direct link with his office.⁹⁴ This initial change moved the unit into a direct reporting relationship with an assistant deputy minister.

PARTICIPANT ENGAGEMENT IN THE SAGITs

While the foregoing sections described the origins, structure and functioning of the SAGITs, this final section reviews the existing empirical research on the groups, specifically, research pertaining to this study's focus, participant engagement in the consultations. The first subsection below examines the level of SAGIT members' engagement in the groups, while the second reviews the literature with an eye to analyzing the nature of participant involvement in the SAGITs. Each subsection draws links, where possible, between the independent variables identified in the preceding chapter (role of the state, alternative channels, and reframing processes) and the level and nature of member engagement in the groups. Given the existing literature's focus on the CUSFTA negotiations, this section speaks solely to this time period.

d'administration publique, The Institute of Public Administration of Canada, Canadian Institute of International Affairs, Hull, Québec, November 1-3, 2001), 28.

It must be stressed at the outset of this discussion that the aim here is not to test the dissertation's hypotheses or to claim any general validity arising from links between the existing empirical literature on the SAGITs and this study's theoretical propositions. Rather, the purpose is to survey in broad terms the existing research on the SAGITs through the analytical lens of this dissertation. Chapters 5 through 7 study the level and nature of participant engagement in the Cultural Industries SAGIT over time and formally test the dissertation's hypotheses.

Level of engagement

Chapters 1 and 2 identified three potential levels of engagement – active engagement, passive engagement, and disengagement – along with a number of working hypotheses seeking to explain participant adoption of any one of these stances. The paragraphs below examine the empirical literature on SAGIT participant engagement levels and investigate the relationship between engagement outcomes and the dissertation's working hypotheses. As noted above, this analysis does not seek to confirm or refute the dissertation's working hypotheses – the empirical test of the research hypotheses takes place in Chapters 5 through 7 – but rather it aims to examine what the existing empirical literature suggests about participant engagement in the SAGITs.

The above-noted studies undertaken by Moroz and by Doern and Tomlin indicate that the vast majority of SAGIT participants at CUSFTA were actively engaged in the

⁹⁴ Interview 1314.

consultations. There was no evidence in their research of passive engagement and the only finding that could be characterized as disengagement was the outright refusal of labour to participate in the process.⁹⁵ While these studies did not seek to investigate the factors underpinning active engagement, a number of their findings point to the relevance of this study's working hypotheses to participant engagement levels.

As described in the preceding chapter, this study hypothesizes that the level of engagement will be influenced by state structuring of the deliberative consultation channel (through membership selection, resource allocation, and policy influence of the channel) as well as by alternative channels for interest representation. Moroz's study lends support to this contention. The majority of SAGIT respondents in her study reported high overall satisfaction levels with the government's role in the functioning of the groups, with, for example, 57 percent feeling the written briefs provided by TNO officials were adequate, and 79 percent finding that they had a good or fairly good sense of how the negotiations were developing.⁹⁶ While Moroz did not query the relationship between the adequacy of information the government provided to SAGIT members and their resulting levels of engagement, these findings do not contradict the working hypotheses of this dissertation pertaining to the role of the state.

⁹⁵ Moroz notes that the Arts and Culture SAGIT "broke apart, as members refused to participate in consultations that might lead to the cancellation of safeguards for their industry" (Moroz, *The Changing Constellation*, 226). She did not conduct any interviews with members of the Arts and Culture SAGIT, however, noting that members could not be located or declined to participate in the study. As Chapter 5 reveals, participants interviewed for this study indicated that the group never broke down and virtually all members were actively engaged.

⁹⁶ Moroz, *The Changing Constellation*, 220-222.

With respect to benefits for their company or sector, SAGIT members stated that the two greatest benefits were knowing the potential impact of the CUSFTA on their sector and the capacity to influence policy.⁹⁷ The first of these benefits points to the relevance for consultation participants of acquiring information from the government through their participation in a consultation.

The second benefit SAGIT members noted highlights the importance to industry representatives of influencing policy via their participation in a consultation. Close to two-thirds of the ITAC and SAGIT members Moroz surveyed believed that the consultations made a difference to the outcome of the agreement.⁹⁸ Many SAGIT members who felt the consultations made a difference to the CUSFTA pointed to specific portions of the agreement that their group helped to refine. For others, such as the brewing industry, SAGIT members felt their participation in the consultations convinced the government to leave their sector out of the Agreement. These findings demonstrate the importance to consultation participants that their participation in the process influences policy.

Interestingly, one of the most frequently cited personal benefits noted by SAGIT respondents as a result of their participation in the groups was knowledge of other industry officials (31 percent of respondents cited this as a personal benefit).⁹⁹ This finding suggests that deliberative consultations can result in indirect benefits to

⁹⁷ Ibid, 236-239.

⁹⁸ Ibid, 252-256.

participants, in this case intra-sectoral networking. While Moroz did not query the relationship between this benefit of participation and participation levels, it does point to the importance private sector actors place on such indirect benefits. This could suggest that one rationale for passive engagement is that members derive indirect benefits from attending consultation meetings.

None of the empirical studies comments directly on the role played by alternative channels, although the role of the state in limiting alternative domestic public channels seems germane. The initial documentation establishing the SAGITs noted, "The Advisory Committees [the ITAC and SAGITs] are intended to be the principal channels of advice to the Government on trade issues. While information and advice conveyed to the Government by specific firms, associations and labour groups will continue to be useful and welcome, the Minister will be looking primarily to the advisory committee system as the source of private sector input on trade matters."¹⁰⁰ The government appeared to position the groups as the main channel for interest representation, which may account for industry's active engagement in the groups.

In Doern and Tomlin's account of the Financial Services SAGIT and the Agriculture, Food and Beverage SAGIT (described in more detail below), the members of these two SAGITs that felt their views would not prevail in their sector (the big six banks and food processors, respectively) did not appear to exit the SAGIT for alternative

⁹⁹ Ibid, 236-237.

public or private channels. This may suggest that the government's attempt to position the SAGITs as the primary channel for private interest representation encouraged actors to continue to voice their policy preferences within the consultation – even if they felt their views would not prevail – rather than disengage from the process.¹⁰¹

Nature of engagement

With respect to the nature of participant engagement, Chapter 2 identified four potential consultative dynamics: intrasectoral conflict, intrasectoral collaboration, sector-governmental conflict and sector-governmental collaboration. The Chapter also proposed a number of working hypotheses with respect to the nature of consultation members' engagement. The paragraphs below examine the existing empirical literature on the SAGITs in the light of these working hypotheses.

At the intrasectoral level, the dissertation submits that reframing events will generate intrasectoral collaboration (conflict) where they align (uncouple) participant interests. Moroz notes that in addition to conflict generated by the diversity of intrasectoral interests, the second issue leading to conflict was the “gradual dismantling of

¹⁰⁰ Department of External Affairs, “Minister for International Trade Appoints Chairman,” 2.

¹⁰¹ Doern and Tomlin noted that the Minister of Finance Michael Wilson (rather than chief negotiator Simon Reisman) made the final decisions on the financial services provisions of the CUSFTA. While Minister Wilson could have represented an alternative channel for the banks, Doern and Tomlin note that “Wilson, who would normally be an ally of the banks, was from the securities industry, a sector with a long history of conflict with the banks.” Doern and Tomlin, *Faith and Fear*, 118.

protectionist measures for vulnerable industries.”¹⁰² That is, trade liberalization was the international challenge/opportunity generating conflict within the SAGITs. As previously noted, where trade liberalization represented different challenges and opportunities for members of an individual SAGIT (such as the Agriculture, Food and Beverage SAGIT), it resulted in intrasectoral conflict. Moroz also notes that sector-governmental conflict obtained in the Arts and Cultural Industries SAGIT because of participant concerns that the free trade agreement would lead to the cancellation of safeguards for their industry.¹⁰³ While Moroz did not query the factors promoting collaboration (rather than exit) in the face of conflict, over half of the study participants (57 percent) stated that conflicts remained unresolved throughout the process, one quarter (25 percent) indicated the SAGIT members resolved conflicts democratically, and a further 18 percent credited the SAGIT chairperson with working to resolve the conflict.¹⁰⁴

Existing empirical studies also suggest that state decisions regarding the structure and functioning of the consultation influence the nature of intrasectoral engagement. Moroz notes that some of the SAGIT members who indicated that conflict dominated the dynamics of their group (i.e., conflictual intrasectoral relations) stated that competing interests among the members appointed to the group were the source of the conflict. She states, “This was especially true of the Agriculture, Food, and Beverage SAGIT, where many of the participants’ interests lay directly at odds with one another. Food processors,

¹⁰² Moroz, *The Changing Constellation*, 226.

¹⁰³ Ibid.

for example, favoured the liberalization of trade in agricultural products so that they could have access to less expensive raw materials for processing. Producers, on the other hand, argued for maintaining strong regulations and marketing boards to safeguard their industries and to ensure high grade products.”¹⁰⁵

While in some respects this diversity of interests reflected the diversity of the sector itself, it also reflected the decision of the Canadian government to group food processors and agricultural producers together in a single SAGIT. As Doern and Tomlin found, the Agriculture, Food, and Beverage SAGIT was the largest SAGIT “because of the intense struggle that was waged from the outset to try to capture it.”¹⁰⁶ John Wise, the Minister of Agriculture at the time “made every effort to stack the SAGIT with members committed to preserving Canada’s system of supply management through marketing boards.”¹⁰⁷ In addition, the TNO’s two main agricultural negotiators also supported marketing boards. As a result, food manufacturers were outnumbered and outvoiced on the group, leading Doern and Tomlin to describe these interests (as previously noted in this chapter) as “surrounded on the inside”.¹⁰⁸ In sum, government decisions regarding membership of this group impacted the nature of participant engagement, not only by grouping these two opposing sectors together, but also by weighting the membership of the SAGIT more heavily with primary producers. Doern and Tomlin observe, “The first time these two wings [primary producers and food

¹⁰⁴ Ibid, 228-229.

¹⁰⁵ Ibid, 226.

¹⁰⁶ Doern and Tomlin, *Faith and Fear*, 114.

¹⁰⁷ Ibid.

manufacturers] of the agri-food industry were required to deal seriously with these differences in their positions was during the SAGIT process.”¹⁰⁹

The dissertation hypothesizes that the state plays a pivotal role in accounting for sector-governmental relations, submitting that where state behaviour is favourable (inimical) to participant interests, sector-governmental collaboration (conflict) will ensue. Doern and Tomlin’s account of the conflict in the Financial Services SAGIT appears to support this contention by suggesting that government decisions regarding membership played a pivotal role in the resulting consultation dynamics. The membership of the Financial Services SAGIT surprisingly included only two representatives from the big six chartered banks, and the government defined financial services broadly to include “general issues of trade in financial services,” which then encompassed all of the four pillars of the financial system (banks, trust companies, securities firms and insurance companies). The remainder of the SAGIT’s membership represented firms from the other pillars of the financial system, as well as a member representing a foreign-owned bank in Canada. As a result of this membership structure, Canadian bankers believed that the banking sector would be “traded off” in the forthcoming negotiations for concessions in other sectors, and as a consequence, despite their tradition of good government relations, experienced a conflictual relationship with the government in the consultations.¹¹⁰

¹⁰⁸ Ibid.

¹⁰⁹ Ibid, 115.

¹¹⁰ Doern and Tomlin also note the importance of partisan political considerations in business-government relations in the banking sector during the CUSFTA negotiations.

CONCLUSIONS

The Mulroney Conservative government's establishment of the SAGITs in the mid-1980s marked a departure from the previously informal, fragmented and ad hoc process of trade policy consultations in Canada, and represented the most extensive trade policy consultation process undertaken at the federal level in Canadian history. The twin impetus for this initiative derived from the private sector's dissatisfaction with the level of its involvement in the Tokyo Round of multilateral trade negotiations, as well as the growth in industry interest in the upcoming bilateral negotiations with the United States. The two-level consultative structure, adapted from the American private sector advisory system, comprised the International Trade Advisory Committee and the Sectoral Advisory Groups on International Trade, the former to provide general broad-based advice and the latter to furnish sector-specific input to the trade negotiations.

Although there has been little empirical research conducted on the SAGITs, the studies reviewed for this chapter suggest that overall the SAGITs received a positive reception from the Canadian private sector in the period following their inception. At the time of the CUSFTA negotiations, members appeared to be actively engaged in the process, and relatively satisfied with the structure and functioning of the groups. Both collaborative and conflictual dynamics appear to have characterized the nature of SAGIT members' participation. While existing empirical research did not directly query the factors accounting for the level and nature of SAGIT participant engagement, a close

Certain Ministers and MPs of the Mulroney government blamed the big six banks as part of the Eastern Canadian establishment "for permitting the Liberals to run Canada for the

review of these extant SAGIT investigations revealed a measure of support for the working hypotheses of the present study. As previously noted, this analysis did not seek to formally test this study's hypotheses (this is the focus of Chapters 5 through 7), but rather to review the existing empirical literature through the prism of the dissertation's theoretical framework and assertions. The foregoing analysis pointed to the potential importance of the role of the state in terms of membership selection, resourcing (especially information provision), and policy influence of the groups in influencing the level and nature of participant engagement. Moreover, it suggested that indirect benefits of participation, such as intra-industry networking, may represent important advantages to private sector members of consultations.

The coming chapters on the SAGIT on culture at the CUSFTA negotiations (Chapter 5), the NAFTA negotiations (Chapter 6), and in the period preceding the Third WTO Ministerial Conference (Chapter 7), scrutinize the working hypotheses respecting participant engagement at each of these periods. Before this, the next chapter examines the cultural industries in Canada, specifically the policy framework in each of the main cultural industries sectors, the industry profile of the main sectors, and the changing environment of cultural industries policy-making.

CHAPTER 4

THE CULTURAL INDUSTRIES IN CANADA

INTRODUCTION

This chapter describes the cultural industries policy framework, as well as the industrial structure of the cultural industries in Canada.¹ It sets the policy and economic context within which trade policy consultations in the cultural industries sector take place. In the first section, the chapter describes the rationale and objectives of cultural industries policy, as well as the main policy instruments in the field. In the second section, the chapter explores the changing context for cultural industries policy-making, specifically the frictions between trade policy and cultural policy, the growing number of trade disputes in the sector, and the impact of technological change on the cultural industries. Following this, a series of subsections examine the key policy measures in the cultural industries subsectors, and provide a statistical portrait of each industry segment.

CULTURAL INDUSTRIES POLICY: A MULTIPLICITY OF PROBLEMS, OBJECTIVES AND POLICY INSTRUMENTS

The Rationale and Objectives of Cultural Industries Policy

From the government's perspective, Canada's cultural policies seek to enhance Canadians' access to Canadian content, to increase the production, dissemination, and

¹ This study analyses the following sectors: publishing (newspaper, book and periodical publishing), the audiovisual sector (film and television production and distribution), and sound recording and radio broadcasting. This excludes the performing arts (e.g., theatre, opera and dance), the visual arts, museums, libraries, public archives, and heritage

preservation of Canadian content, to foster excellence and participation in cultural activities, to build capacity in the cultural sector, to connect Canadians to one another, and to promote Canadian values and cultural interests internationally.² Canada pursues these objectives through a cluster of inter-related but distinct policies, including multiculturalism policy, language policy, arts and heritage policy, and, of central concern to this study, cultural industries policies.

At their core, cultural industries policies seek to “develop a sustainable, competitive environment in Canada for the production and distribution of Canadian cultural content in all media”³ (i.e., television and radio broadcasting, book, magazine and newspaper publishing, audio-visual production, sound recording and multimedia). In Canada, the cultural industries are essentially the industrial means to a cultural end: “The cultural industries are simply the vehicles by which the expressions of a nation’s culture are ‘published’.”⁴

The underlying rationales for these policies are the twin challenges of cultural production in a country with a small and diverse population, and a cultural giant for a

organizations, none of which are defined as segments of the cultural industries in the CUSFTA or NAFTA.

² Department of Canadian Heritage, *2001-2002 Estimates, Part III Report on Plans and Priorities* (Ottawa, Minister of Public Works and Government Services, 2001), 2-3.

³ This is the role of the cultural development sector as stated on the Department of Canadian Heritage website under “The Department: Organization: Cultural Development”, www.pch.gc.ca/culture/english.htm

⁴ A.W. Johnson, “Free Trade and Cultural Industries,” in Marc Gold and David Leyton-Brown, eds., *Trade-Offs on Free Trade: The Canada-U.S. Free Trade Agreement* (Toronto: Carswell, 1988), 350.

southern neighbour. As noted in Chapter 2, cultural products constitute a key export sector for the United States, and American cultural output dominates the Canadian marketplace. Foreign products (largely American) penetrate the Canadian market deeply, with, for example, foreign firms and products accounting for more than 94 percent of screen time in Canadian theatres, 81 percent of English-language consumer magazines on Canadian newsstands, and 79 percent of the retail sales of tapes, CDs, concerts, merchandise and sheet music.⁵

⁵ Cultural Industries Sectoral Advisory Group on International Trade, *Canadian Culture in a Global World: New Strategies for Culture and Trade* (Ottawa: Department of Foreign Affairs and International Trade, February 1999), 7. This figure includes all foreign products and firms, not just those originating in the US, but American firms and products account for the vast majority of these figures (see Statistics Canada, "Market Opportunities: International Trade of Cultural Goods and Services," *Focus on Culture: Quarterly Bulletin from the Culture Statistics Program*, 12, 4 (Winter 2000), Catalogue no. 87-004-XIE).

*Overview of Policy Instruments for the Cultural Industries*⁶

The Canadian government draws on virtually every policy instrument at its disposal to intervene in the cultural industries sector. While the nature, mix, and calibration of policy instruments varies from sector to sector, intervention in most sectors involves some combination of expenditure, taxation, regulation, and public ownership.⁷ Given this commonality between the sectors, by way of introduction, the section below briefly examines each of these instruments as they pertain to cultural industries policy.

⁶ This research focuses on policies at the federal level. While provincial and municipal governments also intervene in the cultural sector, given this study's concern with trade policy consultations at the national level, the emphasis is accordingly on policies at this level. Readers interested in provincial and municipal intervention in the cultural industries sector may consult Donna Cardinal, "Changing Purposes of Municipal Cultural Policy," paper prepared for the Special Interdisciplinary Colloquium, "Cultural Policies and Cultural Practices: Exploring The Links Between Culture and Social Change," Ottawa: *Congress of the Social Sciences and Humanities*, June 3-4 1998; Fernand Harvey, "Préoccupations communes, cheminements distincts: les politiques culturelles au Québec et au Canada anglais," paper prepared for the Special Interdisciplinary Colloquium, "Cultural Policies and Cultural Practices: Exploring The Links Between Culture and Social Change," Ottawa: *Congress of the Social Sciences and Humanities*, June 3-4 1998; and Ronald Rompkey, "The Uncertain Past: Newfoundland Cultural Policy Since Confederation," paper prepared for the Special Interdisciplinary Colloquium, "Cultural Policies and Cultural Practices: Exploring The Links Between Culture and Social Change," Ottawa: *Congress of the Social Sciences and Humanities*, June 3-4 1998.

⁷ Globerman also notes that the state uses moral suasion in certain sectors, "suggesting", for example, to Canadian radio broadcasters that they voluntarily increase the Canadian content level of ethnic programming (Steven Globerman, *Culture, Governments and Markets: Public Policy and the Culture Industries* (Vancouver, The Fraser Institute, 1987), 7). This study does not examine the role of moral suasion as it is not one of the primary tools of cultural industries policy, and moreover, as Globerman indicates, "Instances of moral suasion are difficult to identify since unofficial "requests" of the government are frequently made on a confidential basis." (Globerman, *Culture, Governments and Markets*, 8).

Expenditure. The government uses direct expenditure in virtually all of the cultural industries sectors. Creators, producers and distributors are often the targets of direct expenditures. The Canada Council for the Arts, for example, funds Canadian artists working in all sectors of the cultural industries, while the Canadian Film Development Corporation (Telefilm Canada) funds independent film, television and new media. The Department of Canadian Heritage also administers a range of funding programs such as the Book Publishing Industry Development Program, which supports production and distribution in the book publishing industry.

Table 5 on the following page shows direct federal funding for arts and culture over the decade 1992/1993-2001/2002.

Table 5: Selected Federal Arts and Culture Funding, 1992-3 to 2001-2 (\$ millions)

Arts and Culture Funding	1992-3	1993-4	1994-5	1995-6	1996-7	1997-8	1998-9	1999-2000	2000-1	2001-2
Department of Canadian Heritage	1152.1	1033.4	1128.3	966.9	918.0	995.0	908.8	732.5	831.4	952.2
Departmental Agencies										
Canadian Radio-television and Telecommunications Commission	37.8	34.8	21.5	21.2	3.3	3.8	4.6	5.9	4.5	8.4
National Archives of Canada	62.4	59.4	59.4	58.3	49.8	46.2	45.0	45.2	46.8	50.8
National Film Board of Canada	81.7	82.6	81.7	75.9	65.2	57.7	55.9	59.5	59.6	60.6
National Library of Canada	45.5	46.0	37.3	34.4	31.5	29.7	29.5	30.4	32.7	36.2
Crown Corporations										
Canada Council for the Arts	108.4	99.3	98.4	95.9	90.8	88.7	112.0	116.5	114.5	124.2
Canada Science and Technology Museum	16.5	16.1	15.4	20.6	19.6	19.2	18.6	19.7	20.3	22.9
Canadian Broadcasting Corporation	1112.4	1089.5	1091.1	1064.6	963.2	857.9	844.0	903.9	901.1	923.0
Canadian Film Development Corporation (Telefilm Canada)	145.1	132.4	122.3	109.8	91.3	81.0	78.2	78.7	79.4	125.5
Canadian Museum of Civilization	40.7	39.1	38.1	46.2	44.1	45.6	44.5	46.3	47.5	49.7
Canadian Museum of Nature	19.5	18.8	18.1	25.0	24.1	20.6	19.5	20.5	21.1	23.7
National Arts Centre	22.5	22.3	21.7	19.3	17.4	19.6	19.5	21.5	21.5	23.9
National Gallery of Canada	29.9	28.7	27.7	33.4	31.8	32.5	31.6	32.5	33.3	36.2
TOTAL	2874.5	2702.4	2855.7	2674.4	2445.2	2392.1	2303.6	2546.9	2663	2919.2

Source: Adapted from Monica Gattinger, "The Liberals' 'Reinvestment' in Arts and Culture: From Patron to Patronage?" in G. Bruce Doern, ed., *How Ottawa Spends 2002-2003: The Security Aftermath and National Priorities* (Toronto: Oxford University Press, 2002), 215.

The table presents a wide range of arts and culture funding, including funding beyond the scope of this study (e.g., the National Gallery, the National Library of Canada, museums, etc.).⁸ Expenditures relevant to the cultural industries are those for the Canada Council for the Arts, Telefilm Canada, various funding programs of the Department of Canadian Heritage, as well as the National Film Board and the Canadian Broadcasting Corporation.

The Canada Council for the Arts is the government's primary arts funding agency. Its twin funding sources are income from an endowment and annual Parliamentary appropriations; in fiscal year 2001-2002, the latter stood at \$124.2 million. Telefilm Canada received a similar level of government funding, with a budget of \$125.5 million in this same year. As noted above, the Department of Canadian Heritage operates numerous funding programs for the cultural industries (the sector policy profiles below describe a sampling of these programs).

The National Film Board, in contrast to Telefilm Canada, produces and distributes films and documentaries focusing on Canada. With a budget of \$60.6 million in 2001/2002, it receives roughly half the government funding directed to Telefilm Canada. Finally, the Canadian Broadcasting Corporation (CBC), whose one billion dollar budget accounts for roughly one third of total federal spending on arts and culture, is Canada's

⁸ For a review of trends in direct federal expenditures on arts and culture in the Chrétien Liberal era, see Monica Gattinger, "The Liberals' "Reinvestment" in Arts and Culture: From Patron to Patronage?" in G. Bruce Doern, ed., *How Ottawa Spends 2002-2003: The*

national public broadcaster. The CBC is a publicly-owned corporation, and as such, is not an instrument of direct expenditure *per se*. Its role will be examined briefly in the section below on public ownership.

The government also intervenes with tax expenditures in the cultural industries. Probably the most notable tax expenditure – until its elimination in the late 1990s – was the Capital Cost Allowance for feature film production. In 1974, the federal government amended the Income Tax Act to increase from 60 percent to 100 percent the allowable capital cost deduction for investors in certified Canadian films. In 1976, the government extended this allowance to short films and video productions, and decreased the allowance for *non-certified* films from 60 to 30 percent. Then, in the early 1980s, the government reduced the allowable deductions for certified films by one half and further lowered them to 30 percent in 1988. Until the late 1990s, when the government completely phased out the CCA, these tax expenditures constituted an important component of the policy framework for the film production industry.

The Canadian Film or Video Production Tax Credit is one of the current major tax expenditures. This program provides a tax credit for film or video productions certified as Canadian content. The credit applies to eligible labour expenditures at a rate of 25 percent.

Taxation. The most noteworthy use of taxation has been the government's support to the domestic broadcasting and magazine industries by prohibiting the tax deductibility of advertising expenditures on US border radio and television stations and in foreign-owned periodicals. As Chapters 5 and 7 discuss, the use of this policy instrument in the periodical sector represented a considerable trade irritant for the United States. One of the exceptions to the cultural exemption in the CUSFTA pertained to this piece of legislation, and this policy measure constituted one of the central points of dispute in the Canada-United States trade challenge over *Sports Illustrated*.

Regulation. The government regulates elements of virtually every sector of the cultural industries. The key bodies are the Canadian Radio-Television and Telecommunications Commission (CRTC), the Canadian Intellectual Property Office (CIPO), and (until recently) Investment Canada, which administer, respectively, the *Broadcast Act*, the *Copyright Act*, and the *Investment Canada Act*.⁹ These Acts constitute the regulatory foundation for broadcasting and many of the other segments of the cultural industries by establishing Canadian content requirements in broadcasting, constituting Canada's copyright regime, and delineating foreign ownership restrictions.

The CRTC stands at the centre of regulatory power at the federal level, where it possesses its greatest influence in the broadcasting sector through rulings establishing

⁹ As this chapter's section on convergence describes, the CRTC also administers the Telecommunications Act. The current section focuses on CRTC regulation via the Broadcast Act.

Canadian-content requirements.¹⁰ In the case of television, for example, private stations must broadcast 60 percent Canadian programming over the course of a full day and 50 percent between the hours of 6pm and midnight (averaged over a year). Similar arrangements regulate radio and pay-television broadcasters, as well as cable television companies. The CRTC also regulates foreign ownership in the broadcasting sector through foreign ownership restrictions for radio and television stations, and cable television operators.

CIPO "is the focal point for the regulation and management of Canada's intellectual property system,"¹¹ a system which encompasses patents, trademarks, designs, and, of central interest to this study, copyright. The Chief Executive Officer of CIPO is also the Commissioner and the Registrar, and in this latter capacity is a statutory person under the law with all of the regulatory powers delegated under the *Copyright Act*. The industry subsector profiles below discuss the main provisions of the *Copyright Act* pertaining to the cultural industries. Chapters 6 and 7 discuss, respectively, copyright provisions under NAFTA, and the WTO agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Finally, Investment Canada, until recently, regulated foreign investment in Canada's cultural industries. The regulator's mandate included review and approval of all acquisitions of cultural enterprises in the country, including those already under

¹⁰ Globerman, *Culture, Governments and Markets*, 5.

foreign ownership. In May 1999, the government transferred the responsibility for foreign investment review in the cultural industries sector to the Minister of Canadian Heritage. The Minister reviews foreign investments to ensure they are of net benefit to Canada. Net benefit criterion include whether the investment promotes Canadian content, fosters cultural participation and engagement, strengthens connections among Canadians, and promotes active citizenship and civic participation.¹²

Public Ownership. In addition to the policy instruments noted above, the Canadian government undertakes direct public ownership in the cultural industries via the Canadian Broadcasting Corporation (CBC), a federal crown corporation.¹³ The *Broadcasting Act* mandates the CBC to provide programming in English and in French that is “predominantly and distinctively” Canadian, reflects Canada, the regions of Canada, and the country’s multicultural and multiracial composition, and contributes to shared cultural expression and a common national identity.

THE CHANGING CONTEXT FOR CULTURAL INDUSTRIES POLICY-MAKING

The International Context: Culture/Trade Frictions

From the mid-1980s through to the early years of the twenty-first century, the relationship between Canada’s cultural industries policies and its obligations in trade

¹¹ G. Bruce Doern and Markus Sharaput, *Canadian Intellectual Property: The Politics of Innovating Institutions and Interests* (Toronto: University of Toronto Press, 2000), 22.

¹² See Department of Canadian Heritage web site:
http://www.canadianheritage.gc.ca/progs/ac-ca/progs/eiic-csir/net_e.cfm.

agreements has been an ongoing source of consternation for the Canadian government, those in the cultural community, and the Canadian public. At the source of the friction between cultural industries policy and trade policy is the fundamental incompatibility between a number of cultural industries policy measures and two of the cardinal principles of the international trade regime. Since the creation of the General Agreement on Tariffs and Trade (GATT) in 1947, the objectives of the international trading system have been two-fold: to reduce, and over time, eliminate trade barriers to permit open and secure market access, and to ensure that market access is non-discriminatory.¹⁴

The two arch principles underpinning this system and ultimately at the root of the culture/trade friction are national treatment and most favoured nation (MFN) treatment. The first, national treatment, maintains that government measures affecting market access must not have the effect of discriminating between domestic and foreign producers of similar goods and services. MFN, the second principle, holds that a country's market access commitments must not discriminate between foreign countries. That is, nations are not to discriminate between foreign countries by according more favourable market access to one country over another. According to the MFN principle, the most favourable trade arrangements a nation maintains with one country, it must also extend to all others.

¹³ Given this study's focus on the private sector, the CBC will not be examined in detail. Readers interested in this institution, may consult Anthony Manera, *A Dream Betrayed: The Battle for the CBC* (Don Mills: Stoddart, 1996).

¹⁴ Anne McCaskill, "La culture et les règles commerciales internationales: enjeux et perspectives," Working Document prepared for the First International Meeting of

Cultural industries policies can run afoul of these two principles where governments enact measures that discriminate between domestic and foreign firms or that discriminate between different foreign nations. Because many of Canada's cultural industries policies *by design* discriminate in favour of Canadian producers, they collide head-on with the principle of national treatment. For example, Canadian content regulations, if they were subject to the disciplines of the international trading regime,¹⁵ would not comply with the requirements of national treatment because they favour the cultural output of Canadian nationals over foreign firms thereby discriminating against the latter.

An example in the area of MFN would be Canada's film, video and television co-production agreements. These arrangements aim to stimulate bilateral cultural productions by making firms in the signatory countries eligible for government programs (e.g., production subsidies) in both countries' cultural sectors. Because Canada's co-production agreements do not align with the MFN principle, i.e., they discriminate

Professional Associations in the Cultural Milieu (Montreal, Quebec: Conference presented by the Coalition for Cultural Diversity, September 10-13, 2001), 5.

¹⁵ Canadian content regulations meet Canada's international trade obligations because they apply to cultural services, and therefore are not subject to the provisions of GATT 1994. Nor are they subject to Canada's obligations under the General Agreement on Trade in Services (GATS) because Canada has as yet made no market access or national treatment commitments in the cultural sector in GATS negotiations (GATS/SC/16). See Ivan Bernier, "Mondialisation de l'économie et diversité culturelle: les enjeux pour le Québec," Document de réflexion préparé pour la Commission de la culture de l'Assemblée nationale du Québec (mars 2000), 16-17.

against nations with whom Canada has not made such deals, Canada exempted its co-production treaties from its MFN obligations under the GATS.¹⁶

While neither of these examples have given rise to cultural trade disputes, they illustrate the underlying tensions between cultural industries policy and the international trading regime. The Canadian government is simultaneously under pressure at the domestic level to retain its cultural policy-making capacity, and at the international level, it faces demands, particularly from the United States, to eliminate cultural trade barriers.

Over the fifteen year period of this dissertation, Canada has faced a series of trade challenges over its cultural industries policy measures. Chapter 7 examines one of the most important disputes that took place in the 1985 to 1999 period, that pertaining to the Canadian Edition of *Sports Illustrated*.¹⁷ In addition to this key challenge, as described below, trade frictions also emerged in the audiovisual and book publishing sectors.¹⁸

In 1984, the CRTC added Country Music Television (CMT), a specialty television channel owned by American interests, to the list of eligible foreign channels cable television operators could carry as part of their programming packages. The CRTC

¹⁶ GATS/EL/16.

¹⁷ SAGIT participants and other members of the cultural community consistently identified the trade dispute over *Sports Illustrated* as a seminal event in the sector. Chapter 7 describes this case.

¹⁸ For a full treatment of these cases, in addition to narrowly-avoided and potential disputes over Canada's cultural industries policies, see Keith Acheson and Christopher Maule, *Much Ado about Culture: North American Trade Disputes* (Ann Arbor: University of Michigan Press, 1999).

listed CMT on the condition that if a subsequent application for a similar service came before the CRTC from Canadian-owned interests, the Commission would delist the American channel from the list of eligible foreign channels and replace it with the Canadian offering.

In 1994, Canadian-owned cable and media interests came forward with just such an application, proposing a new specialty channel called the New Country Network (NCN). In 1995, the CRTC awarded the license to the Canadian applicants, removed CMT from the list of eligible American services for cable carriage, and replaced it with NCN. In response, CMT threatened to pull the videos of Canadian country music artists from its programming line-up. This move pitted members of the Canadian music industry against the CRTC and NCN, as artists viewed their prospects for international success as intimately linked to exposure on CMT, a channel with international broadcast coverage.¹⁹ CMT also complained to the United States Trade Representative, who undertook preparations to retaliate against Canadian telecommunications and cultural industries firms operating in the United States, as well as various Canadian export industries including maple syrup, fur coats and sound recordings.

This case was ultimately resolved by the private sector players involved, when the owners of Country Music Television and the New Country Network announced that CMT would acquire a minority interest in NCN, the licensed Canadian channel. With

¹⁹ Jim Morris, "Music Industry Split on CMT Ban on Canadians," *The Calgary Herald*, January 21, 1995, B15.

majority ownership of NCN residing in the hands of Canadians, the CRTC approved the ownership configuration in the summer of 1996. The Canadian-owned licensee subsequently renamed NCN Country Music Television. By 1997, the CRTC announced that it would not generally delist a non-Canadian service following the licensing of a competitive Canadian offering.

In contrast to the CMT case where private sector interests resolved the dispute, in the case of satellite broadcasting, the Canadian government attempted to prohibit American interests from entering the direct-to-home (DTH) satellite market in Canada. In 1994, two American DTH companies, DirecTV and United States Satellite Broadcasting (USSB), launched their satellite television services. At this time, no comparable Canadian service existed and because the broadcast area of these American signals spilled over into Canada, most Canadians could receive their programming using illegal decoders. Canadian cable companies and potential Canadian DTH operators insisted that American DTH firms comply with regulatory requirements imposed on Canadian broadcasting undertakings.²⁰

In the year prior to the launch of the American DTH services, the CRTC held hearings on the matter and concluded that Canadian satellite services would constitute an important element of the response to the threat of the US services. It informed the American services that they would require a license to operate in Canada, and licenses would only be awarded to DTH services with 80 percent Canadian ownership.

Moreover, as a condition of license, DTH services operating in Canada needed to utilize Canadian satellites to deliver their programming.

In May 1994, a consortium of Canadian firms worked to create a Canadian competitor to the American services. The venture ultimately failed, however, owing partly to the diverging interests of the various members of the group, which included telecommunications and cable firms. In the meantime, Canadian-owned Power Broadcasting Corp. formed a partnership with American-owned DirecTV to create Power DirecTV, an arrangement that would meet the CRTC domestic ownership requirements for licensing. In addition, some of the members of the failed consortium (mentioned above), partnered to create ExpressVu, a service that conformed with CRTC requirements. In December 1995, the CRTC awarded licenses to both ExpressVu and Power DirecTV, and ordered the two services to broadcast predominantly Canadian programming and to contribute to a financing fund for Canadian audiovisual production.²¹

This case ably demonstrated the impact of technology on the effectiveness of traditional regulation. Notwithstanding the prohibition on American-owned DTH services, many Canadians continue to receive American DTH signals in the so-called "grey market," by purchasing satellite signal decoders and subscribing to American services using American billing addresses.

²⁰ Acheson and Maule, *Much Ado About Culture*, 225.

The timeline in Appendix B shows Canada's main cultural trade disputes in the 1985 to 1999 period and provides a detailed chronology of the *Sports Illustrated* case, described in Chapter 7.

*The Technological Context: Convergence and Policy Instrument Decay*²²

Technological change in the information and communications technologies sector affects the cultural industries in at least two fundamental respects. Digitization and the development of global communications networks lead to convergence of previously distinct industrial sectors such as broadcasting and telecommunications, and they can result in a significant reduction in the effectiveness of traditional policy instruments in the sector.

Advances in the technologies of information and communication have blurred the lines between previously distinct industrial sectors such as broadcasting and telecommunications. While the CRTC regulates based on the *Telecommunications Act* and the *Broadcasting Act*, and has traditionally organized its operations along these two business lines, the Commission has increasingly needed to rethink the definition and meaning of such activities as broadcasting, when the Internet technologically enables telecommunications firms (not to mention individual citizens) to transmit digital audio and audiovisual content. Indeed, firms operating traditionally in the telecommunications

²¹ Power DirecTV ultimately decided not to launch a service. The CRTC awarded licenses to other Canadian DTH offerings, including Star Choice.

sector, such as Bell Canada Enterprises (BCE), are stepping into the broadcasting sector, as BCE's foray into the DTH satellite business described above clearly demonstrates.

Technology also leads to convergence between the various subsegments of the cultural industries themselves, as the operations of firms in the sector increasingly span a number of diverse subsegments of the industry. Companies such as Rogers Communications and CanWest Global Communications do not limit themselves to a single cultural industries sector, instead operating across such diverse subsectoral lines as magazine publishing, video rentals and cable television in the case of Rogers (Rogers is also a telecommunications firm with a substantial wireless business), and for CanWest Global, doing business in publishing, television, radio, on-line services, and audiovisual production.

Technological developments catalysing convergence can also corrode policy instruments, in particular, regulation. Instrument decay results largely because the government designed regulatory interventions in a non-networked environment. For example, one of the factors leading to the trade dispute over the Canadian edition of *Sports Illustrated* was the move by magazine publisher Time Warner to electronically transmit the periodical's editorial content to a printing plant in Canada, thus bypassing the government's long-standing safety-valve for split-runs – physical seizure of split-run magazines by customs inspectors at the Canadian border.

²² This section offers a very brief overview of technology and the cultural industries. For a more detailed treatment of the subject, see Acheson and Maule, *Much Ado About*

An additional example of new technologies weakening traditional regulatory frameworks can be found in the satellite broadcasting case described above, where American DTH operators are arguably beyond the reach of the CRTC because Canadians can access US “spillover” services in the grey market. The Internet offers a further example of technology challenging policy instruments: the Canadian government would be virtually unable to impose Canadian content regulations on Internet sites in the country. The Internet also challenges the protection of intellectual property because of the technological challenge of prohibiting Internet users from downloading copyrighted content that have been digitized (e.g., sound recordings, music videos or audiovisual products).

INDUSTRY SECTOR POLICIES AND PROFILES²³

As Acheson and Maule note, “All the cultural industries share the challenges of identifying attractive content, nurturing the development of projects, producing a marketable product, promoting, distributing and selling. Despite that similarity, the historical differences in the economic characteristics of their product and technology have generated distinct policy settings and degrees of success.”²⁴ This section, accordingly, details the principal policy instruments in the various subsectors examined in this research study, and provides a statistical industrial profile for each. The section

Culture, Chapter 2.

²³ This section draws information on industry sector policies primarily from Acheson and Maule, *Much Ado About Culture* (Chapters 7, 8, and 9) and Maryse Robert, *Negotiating NAFTA: Explaining the Outcome in Culture, Textiles, Autos and Pharmaceuticals* (Toronto: University of Toronto Press, 2000), 64-74.

²⁴ Acheson and Maule, *Much Ado About Culture*, 162.

identifies the major public policies for and industrial characteristics of the publishing, audiovisual, sound recording and radio broadcasting sectors. Industry data for each sector illuminate the size and character of each subsector in recent times.

Table 6 on the following pages summarizes the policy information presented in the profiles by identifying the key policy measures for each sector.

Table 6: Main Federal Policy Instruments for the Cultural Industries Sectors

Cultural Industries Sector	Policy Instrument					
	Expenditure		Taxation	Regulation		Copyright
	Direct Expenditure	Tax Expenditure		Canadian content	Ownership, Investment and Control	
Publishing						
Books	*Canada Council *Book Publishing Industry Development Program *Cultural Industries Development Fund *Postal subsidy replaced in 1993 with direct assistance				*Baie Comeau policy	*Parallel importation prohibited
Periodicals	*DCH direct assistance program *Canada Council publication subsidies *Cultural Industries Development Fund		*Section 19 <i>Income Tax Act</i> as amended	*Bill C-55 as amended	*Bill C-55 as amended	
Newspapers	*Publications Assistance Program for small weekly newspapers		*advertising deductions only allowed for firms 75 percent or more Canadian owned		*Foreign investment review of new or expanding foreign firms	

Policy Instrument						
Cultural Industries Sector	Expenditure		Taxation	Canadian content	Regulation Ownership, Investment and Control	Copyright
	Direct Expenditure	Tax Expenditure				
The Audiovisual Sector						
Television Broadcasting	*Canadian Television Fund		*Bill C-58 disallows tax deductions for advertising on US border stations	*Conventional broadcasters and pay/specialty channels: -60% on yearly basis and 50% in prime time -Canadian priority in specialty channel licensing (softened following CMT case) *Cable and DTH: -regulations for base/discretionary tier -priority carriage	*Foreign control prohibited *Foreign ownership restrictions	*CUSFTA retransmission rights
Film Distribution	*Telefilm Canada -Canada Feature Film Fund			*Canadian content requirements for television broadcasting	*Foreign takeovers prohibited	*Foreign firms can only distribute films if they own proprietary rights (majors grandfathered)

Cultural Industries Sector	Policy Instrument					
	Expenditure		Taxation	Regulation		Copyright
	Direct Expenditure	Tax Expenditure		Canadian content	Ownership, Investment and Control	
The Audiovisual Sector (cont'd) Film and Television Production						
*Telefilm Canada -Canadian Broadcast Development Fund -Feature Film Fund *Canadian Television Fund	*Canadian Film or Video Production Tax Credit			*Canadian content requirements for television broadcasting *Co-production treaties	*Foreign investment review	
Sound Recording and Radio Broadcasting	*Foundation to Assist Canadian Talent on Records, FACTOR *MusicAction *Canada Music Fund		*Canadian talent development tax *Blank tape levies *CUSFTA Article 401 tariff elimination	*Canadian content requirements for AM and FM radio	*In radio broadcasting: -foreign control prohibited -foreign ownership restrictions *In sound recording, foreign investment review	*Copyright Act -1988 amendments abolishing compulsory licensing -1993 amendments introducing public performance rights

Publishing

Book Publishing

Canadian book publishers print a variety of books, including fiction and nonfiction, mass market paperback, reference, text and trade books. These publications may be foreign or Canadian, import or export, and own or agency titles.²⁵ Table 7 below shows the size and character of the public publishing industry over time.

Table 7: Selected Indicators for the Book Publishing Industry

Indicator	1991-92	1996-97	Average Annual Growth Rate 1991/92-1996/97 (percent)
Number of companies	369	360	-2.4
Canadian-controlled publishers	NA ²⁶	330	NA
Total revenue (\$ millions)	1,525	1,945	5.0
Own book sales in Canada	582	642	2.0
Exports	48	119	19.8
Exclusive agency sales in Canada	664	834	4.7
Percent of firms with profit (%)	60.4	53.9	-2.3

Source: Statistics Canada, *Canadian Culture in Perspective: A Statistical Overview: 2000 edition*, Catalogue no. 87-211-XIB (Ottawa: Minister of Industry, 2000), Tables 4.2.1 and 4.2.4; Statistics Canada, *Canada's Culture, Heritage and Identity: A Statistical Perspective: 1997 edition*, Catalogue no. 87-211-XIB (Ottawa: Minister of Industry, 1997), Table 4.3.2.a.

As the table reveals, the number of book publishing firms in Canada held relatively steady in the 1991-92 to 1996-97 period with more than 350 firms operating in

²⁵ Own-titles are those originated by the publisher themselves whereas agency-titles are those where a Canadian-based company acts as a sole distributing agent for a foreign-originated title.

²⁶ Data for Canadian-controlled publishers not listed for the years 1990-91 and 1991-92 on the Statistics Canada website or in the Statistics Canada publications used to generate the table.

the sector. The data for 1996-97 show the impact of the Canadian government's restrictions on foreign ownership and control in the book publishing industry (see below). Almost all of the firms in the sector were Canadian-controlled corporations (Canadian interests controlled 330 out of the 360 firms in 1996-97).

Total book publishing revenues grew from just over \$1.5 billion to close to \$2 billion between 1991-92 and 1996-97, an average annual growth rate of 5.0 percent for the period. Just over one-third of total revenues originated from own book sales (i.e., sales of a publisher's own titles) in Canada and abroad. Publishers' exports have grown much more rapidly than domestic sales, posting an average annual growth rate of close to 20 percent in the 1991-92 to 1996-97 period.

The row showing exclusive agency sales in Canada illustrates the importance of foreign titles to the domestic book publishing industry, with revenues from exclusive agency (i.e., sales of foreign book titles for which a publisher acquires exclusive distribution rights) exceeding own title revenues for both years in the table. Book publishers show relatively weak profit levels, with only 60 percent or less of publishing companies posting a profit in the years 1991-92 and 1996-97. As a result of the lack of profitability in the sector, government subsidies constitute an important policy tool for book publishers (see below).

Canada's primary means of support for the book publishing industry are direct expenditures, foreign ownership restrictions, and copyright legislation. In the case of direct expenditures, the Canada Council, the Department of Canadian Heritage, the Social Sciences and Humanities Research Council (SSHRC), and the Business Development Bank administer grant and loan programs to the sector aimed at supporting the creation of Canadian-authored works published by Canadian publishers. In 1972, the Canada Council began making grants to book publishers through the Block Grant Program. The Department of Canadian Heritage administers the Book Publishing Industry Development Program (BPIDP), originally instituted in 1979 as part of an industrial development assistance policy. The BPIDP provides funding to publishers, industry and associations, and assistance in international marketing.

Book publishers can seek loans of \$20,000 or more through the Business Development Bank of Canada, which administers the Cultural Industries Development Fund, a loan program established in 1990 to support cultural industries producers in the book, film, magazine, new media applications and sound recording industries. The government also helped defray distribution costs by providing postal subsidies to book publishers. In 1993, the government replaced the postal subsidy program with direct assistance for domestic publishers distributing books by Canadian authors.

Foreign ownership restrictions in the book publishing sector originated in 1985 with the Baie Comeau policy, named after the site at which then Minister of

Communications Marcel Masse persuaded Cabinet to adopt the policy. The Baie Comeau policy, implemented through changes to the *Investment Canada Act*, limited foreign investment in book publishing companies. First, it required foreign investors to enter into joint ventures with Canadian-controlled firms in order to acquire Canadian book publishing enterprises. Second, in the case of an indirect acquisition, i.e., where a foreign investor acquired a Canadian book publishing subsidiary through acquisition of its parent corporation, the policy required the foreign investor to sell the publisher at fair market value to Canadians within two years of its acquisition. With respect to this second condition, as Chapter 5 describes, CUSFTA's Article 1607 paragraph 4 established the requirement for the Canadian government to pay fair market value in cases of forced divestiture.

In 1992, the government further tightened foreign ownership limits in the sector, most importantly, by stipulating that foreign investors could no longer acquire Canadian-controlled publishers and distributors under any circumstances. As Acheson and Maule state, "The ownership structure of the industry is frozen in the sense that no new foreign publishers can be established in Canada."²⁷ In addition, the policy changes required that foreign investment in new enterprises only take place via Canadian-controlled joint ventures and that foreign investors selling firms operating in Canada give Canadians an opportunity to bid on the sale. The new policy permits indirect acquisitions, provided they are of net benefit to the Canadian-controlled portion of the industry. Investment Canada guidelines also impede foreign investment in the wholesale and retail segment of

the industry. The Canadian-controlled character of the book publishing sector (shown in Table 7 above) reflects these policy measures.

While a broad range of copyright provisions support the book publishing sector, one of the most relevant measures is the prohibition on parallel importation. A component of Canada's original *Copyright Act* of 1921, the measure accorded authors the right to prohibit the importation of their works without their consent. The original statute did not confer such rights to distributors, who stood to lose revenues if retailers "bought around" them, i.e., imported books for which the booksellers held exclusive rights (generally at lower prices) from American publishers holding legitimate rights on the work in the US market. The government extended parallel importation protection to distributors in 1997 thus prohibiting "buying around" Canadian rights holders.

Periodical Publishing

Periodical publishing involves the production and distribution of magazines in a wide variety of subject categories, including general consumer magazines such as *Maclean's*, business or trade magazines, farm magazines, religious magazines, and scholarly periodicals. As shown in Table 8 on the following page, there were close to 1,500 magazine publishers in Canada in 1998-99, up from 1,266 in 1992-93. Of these 1,500-odd publishers, the vast majority only published a single magazine, and a very small number of firms accounted for a sizable proportion of total industry revenues and circulation. Indeed, over 85 percent of firms published only one magazine (1,098 of the

²⁷ Acheson and Maule, *Much Ado About Culture*, 173.

1,266 firms in 1992-93 and 1,274 of the 1,470 companies in 1998-99), and the four largest publishers accounted for one-quarter to one-third of industry revenues and circulation in this same period (in 1992-93, the four largest firms earned 33 percent of industry revenues and comprised 31 percent of magazine circulation; by 1998-99, these figures stood at 29 and 25 percent, respectively).

Table 8: Selected Indicators for the Periodical Industry²⁸

Indicator	1992-93	1998-99
Number of publishers	1,266	1,470
Publishers of one periodical	1,098	1,274
Largest four publishers		
Percent share of revenue	33	29
Percent share of circulation	31	25
Total revenue (\$ millions) ²⁹	1,013	
Advertising	633	NA
Subscriptions and single copy sales	295	

Source: Statistics Canada, "Profile of Canadian Periodicals", www.statcan.ca/english/Pgdb/arts30.htm; Statistics Canada, *Focus on Culture: Quarterly Bulletin from the Culture Statistics Program*, Vol. 13, No. 4 Catalogue no. 87-004-XIB, (Ottawa: Minister of Industry, 2002), 15. The

Sales of advertising space represent a primary source of revenue for the sector. In 1992-93, over sixty percent of the one billion dollars of magazine publisher revenues originated from magazine advertising. In contrast, subscriptions and single copy sales accounted for less than 30 percent of total industry revenues. As described below, one of the central components of Canadian magazine policy has been to direct Canadian

²⁸ The data do not include information on periodicals published in the Northwest Territories and the Yukon.

²⁹ Total revenue figures for the year 1998-99 not available on Statistics Canada website or CANSIM. The 2000 edition of *Canadian Culture in Perspective* (Statistics Canada Catalogue no. 87-211-XIB) did not include a profile of the periodical industry.

advertising dollars to the domestic magazine industry. This policy intervention was one of the measures at the root of the Canada-United States trade dispute over the Canadian edition of *Sports Illustrated*.

The major policy instruments in the periodical industry are expenditure, taxation, and regulation, all designed to support Canadian magazines in the face of American split-run editions.³⁰ The Canadian government has long discriminated against split-run magazines on the rationale that they divert advertising revenues – an integral component of magazine publisher revenues – away from the Canadian magazine industry to foreign periodical publishers. The government utilizes three primary means of supporting the Canadian magazine sector in the face of foreign split-runs: directing advertising revenue to Canadian magazines, prohibiting the import of split-run editions with little or no Canadian content, and maintaining Canadian ownership of the magazine sector.

In contrast to the broadcasting sector, there are no Canadian content requirements in the periodical industry. This reflects the government's apparent assumption that a Canadian-owned magazine industry will produce content reflective of Canada. As Acheson and Maule summarize, "Canada's major policy objective has been to channel advertising revenues to Canadian periodicals in the belief that they would publish and promote Canadian content. No point systems were created to measure "Canadian"

³⁰ A split-run edition is a magazine that contains the identical (or virtually identical) editorial content that appears in the magazine's home market, while substituting locally-based advertising content targeted to subscribers in a secondary (in this case export)

content, as was devised for television programs, the assumption being that a given level of Canadian ownership would ensure that the publication had the desired content."³¹

The key policy measures in the industry are direct expenditures, tax measures, and regulation (non-criminal prohibitions and foreign ownership restrictions). With respect to the first, the government utilizes three primary forms of direct expenditure in the periodical sector. First, postal subsidies help to defray the costs of distribution for publishers. In 1990, the government gradually began to replace these subsidies with direct assistance to the sector. As Chapter 7 discusses, following a 1997 WTO decision ruling that these measures are prohibited under Canada's multilateral trade obligations, the government phased out postal subsidies entirely. The Department of Canadian Heritage now provides direct assistance to periodical publishers.

The Canada Council administers the second form of direct assistance to the industry, with publication subsidies for magazines on poetry, literature, and the visual and performing arts. The Cultural Industries Development Fund is the third source of direct funding to the sector. As previously described, the Fund provides loans of \$20,000 and higher to a range of cultural industries sector producers, including periodical publishers.

market. It is a means for publishers to tailor magazines to export or other regional markets while incurring little or no additional costs to produce new editorial content.

³¹ Acheson and Maule, *Much Ado About Culture*, 167.

Historically, the two primary pieces of legislation supporting the periodical sector were Section 19 of the *Income Tax Act* and Customs Tariff Code 9958, the former, a piece of tax legislation relating to advertising deductions, and the latter, a non-criminal prohibition on imports of split-run magazines into Canada. These two measures dated back to the mid-1960s, and, up until the elimination of Customs Tariff Code 9958, constituted core policy instruments in the periodical industry. The government enacted an additional tax measure in the mid-1990s, but eliminated it in 1998 (along with Tariff Code 9958), following a 1997 WTO ruling that these measures contravened Canada's multilateral trade obligations. The paragraphs below describe each of these measures.

In 1965, the government amended Section 19 of the *Income Tax Act* to encourage the growth of the Canadian magazine industry (it also enacted Customs Tariff Code 9958 in this same year as discussed below). The amendment created a tax deduction for the expenses of advertising placed in Canadian periodicals. By the 1970s, this measure had not generated the intended outcome, i.e., the new advertising deductions did not generate the desired growth of the Canadian magazine industry.³² As a result, in 1976 with Bill C-58, the government restricted the advertising deduction to advertising in Canadian-owned magazines. At this time, the definition of "Canadian-owned" required that the magazines be printed and typeset in Canada (as Chapter 5 discusses, the CUSFTA eliminated this "print in Canada" requirement, which permitted Canadian-owned magazines to print and

³² This was the conclusion of the *Report of the Special Senate Committee on Mass Media* (Davey Report), 3 vols. (Ottawa: Queen's Printer, 1970).

typeset their periodicals in the United States while maintaining the eligibility of their advertising space for income tax deduction).

In 1995, the Canadian government strengthened this framework by levying an excise tax on the Canadian advertising revenues of foreign split-run magazines (Bill C-103). As Chapter 7 discusses, the government established this new measure in response to the entry of Time Warner's Canadian edition of *Sports Illustrated* into Canada. Although advertising expenses in the Canadian edition of *Sports Illustrated* were not eligible for tax deductibility, Time Warner, because editorial costs had largely been covered in the American market, could afford to price advertising at a level low enough to compensate advertisers for the foregone income tax deductions, thus diverting advertising revenue from Canadian-owned periodicals.

Customs Tariff Code 9958 empowered customs inspectors to seize split-run magazines with advertising directed at the Canadian market as they crossed the Canadian border, effectively prohibiting entry into Canada of split-run editions with Canadian advertising. The Canadian government initially grandfathered the two-largest split-runs with the most political influence of the time, *Reader's Digest* and *Time*, from the application of these provisions.³³ In 1997, the WTO ruled that Tariff Code 9958 and the excise tax contravened Canada's multilateral trading obligations.

In response to the WTO ruling, in 1998, the government abolished Tariff Code 9958 and the excise tax. Having lost two of the legs of its legislative framework to direct advertising to the Canadian magazine industry, the government tabled Bill C-55, the *Foreign Publishers Advertising Services Act*. Bill C-55 included a provision making it illegal for Canadian firms to advertise in foreign split-run periodicals. In response to this new policy measure, the United States threatened to retaliate. As Chapter 7 discusses, the two countries resolved the dispute in 1999 with a bilateral agreement in which the Canadian government agreed to amend Bill C-55 to exempt from the provisions of the legislation foreign-owned magazines selling 18% or less of their advertising space to Canadian firms.

In the 1999 agreement with the United States, Canada also agreed to amend Section 19 of the Income Tax Act to extend the tax deductibility of advertising to all periodicals that meet the requisite levels of editorial content irrespective of nationality. The agreement also relaxed Canada's foreign ownership restrictions in the periodical sector. The amendments to Bill C-55 increased the level of permissible foreign ownership to 49% in new and acquired companies. Over time, this level will rise to 100%. *De novo* companies and acquisitions remain subject to Investment Canada review (conducted by the Minister of Canadian Heritage), and must meet the "net benefits" clause of the *Investment Canada Act*, which stipulates that the investment provides net benefit to Canada.

³³ Acheson and Maule, *Much Ado About Culture*, 188. The grandfathering provision was subsequently eliminated, and resulted in an organizational restructuring for *Reader's*

Newspaper publishing

Revenues in the newspaper publishing industry dwarf those in the other print media sectors described above, book publishing and periodical publishing. As shown in Table 9 on the following page, in 1993, the sector earned total revenues of close to \$3 billion. The sector includes daily newspapers, and community, ethnic and special topic newspapers. In 1993, daily newspapers accounted for over three-quarters of earnings in the sector, with \$2.2 billion of the sector's \$3 billion of revenues originating from dailies. The majority of sector revenues derive from sales of advertising space, with daily newspapers earning close to three-quarters of revenues from advertising sales (this figure rises to 94 percent in the community newspaper segment because community papers are often available free of charge).

Table 9: Selected Indicators for the Newspaper Industry, millions of dollars³⁴

Indicator	1993
Revenues	
Advertising revenues	2,249
Sales revenues	722
Total	2,971
Revenues of daily newspapers	
Advertising revenues	1,681
Sales revenues	575
Total	2,256

Source: Statistics Canada, *Canada's Culture, Heritage and Identity: A Statistical Perspective: 1997 edition*, Catalogue no. 87-211-XIB (Ottawa: Minister of Industry, 1997), Table 4.3.4.a.

The industry shows a high level of corporate concentration. Most daily newspapers in Canada are owned by companies that operate newspaper chains.

Digest and the closure of *Time's* Canadian editorial office.

³⁴ The 2000 edition of *Canadian Culture in Perspective* (Statistics Canada Catalogue no. 87-211-XIB) did not include a profile of the newspaper industry.

According to the Canadian Newspaper Association, in January 2003 there were 102 daily newspapers in Canada, and close to 70 percent of these papers were owned by five firms (Osprey Media Group owned 22, SunMedia (Quebecor) owned 15, CanWest Publications owned 13, and Hollinger Canadian Newspapers and GTC Transcontinental each owned 10 dailies).³⁵

There are two main policy measures in the industry. The first is a 1965 provision in the *Income Tax Act* that only permits tax deductions for advertisements placed in newspapers that are 75 percent or more Canadian owned. As Acheson and Maule note, this measure effectively limits foreign ownership in the newspaper publishing sector.³⁶ The second is Section 11 of the *Investment Canada Act* which provides for investment review of new or expanding foreign businesses in the newspaper sector. The Minister of Canadian Heritage reviews these investments to determine whether they are of net benefit to Canada (criteria include whether the investment promotes Canadian content and strengthens connections among Canadians). The Department of Canadian Heritage also administers direct assistance to small weekly newspaper publishers via the Publications Assistance Program.

³⁵ Canadian Newspaper Association website, <http://www.cna-acj.ca/client/cna/cna.nsf/web/FactsOwnership>

³⁶ Acheson and Maule, *Much Ado About Culture*, 164.

The Audiovisual Sector

*Television Broadcasting*³⁷

The television broadcasting sector in Canada includes the major commercial television networks, pay and specialty television firms, cable television operators, and direct-to-home (DTH) satellite systems. Table 10 shows revenues and net profits for the sector in five-year intervals for the period 1985 to 2000. Total industry revenues increased by close to two and one-half times over the last fifteen years, from \$1.6 billion in 1985 to \$3.9 billion in the year 2000. As the table shows, cable television firms garner an important share of sector revenues, accounting for close to or more than half of industry revenues for the years shown in the table.

Table 10: Selected Indicators for the Private Television Broadcasting Industry³⁸

Indicator	1985	1990	1995	2000
Total Revenues (\$ millions)	1,633	2,722	3,376	3,943
Cable companies	672	1,357	1,846	2,056
Other broadcasters	961	1,365	1,530	1,887
Sales of airtime	884	1,248	1,434	1,763
Number of cable subscribers (millions)	5.7	7.1	7.8	8.0

Source: Statistics Canada, Canadian Socio-Economic Information Management System II (CANSIM II), *Privately Owned Television and Radio Industry* (Table Number 3570001: Series V80997, V80998, V81004, and V81015), and Statistics Canada, Canadian Socio-Economic Information Management System II (CANSIM II), *Operating and Financial Summary of the Cable Television Industry* (Table Number 3530001: Series V81330, V81333, V81343, and V81346).

³⁷ As noted above, this study does not examine the government's use of public ownership (i.e., the Canadian Broadcasting Corporation) in the broadcasting sector given the focus of this research on the private sector component of the cultural industries.

³⁸ Excludes pay television and non-commercial broadcasting stations operated by religious groups, educational institutions and provincial governments.

For private broadcasters (excluding cable), sales of airtime constitute the main source of revenue, accounting for over 90 percent of corporate revenues. As described below, the federal government enacted policy measures to encourage advertising revenues to flow to the Canadian broadcasting sector by disallowing tax deductibility for advertising on American border stations. In the cable sector, meanwhile, the majority of revenues derive from subscriber fees.³⁹ The number of homes subscribing to cable television increased steadily in the 1985 to 2000 period, from 5.7 million subscribers in 1985 to 8.0 million in the year 2000.

Canada's broadcasting policy seeks to maintain Canadian content, ownership and control in the television broadcasting industry. Policy measures in the field include direct expenditures and tax legislation, but regulation is, by far, the most prevalent of policy instruments in the television broadcasting sector.

Direct expenditures in the sector include the Canadian Television Fund (CTF), which supports the production and distribution of Canadian programming by funding Canadian owned and controlled firms meeting Canadian content regulations (discussed below). The Fund receives monies from Telefilm Canada, the Department of Canadian Heritage and the cable industry and since 1997, DTH services also contribute 5% of their gross revenues to the Fund. As described in the section on audiovisual production, there

³⁹ Statistics Canada, *Canada's Culture, Heritage and Identity: A Statistical Perspective: 1997 edition*, Catalogue no. 87-211-XIB (Ottawa: Minister of Industry, 1997), 76.

are a range of additional expenditure measures supporting Canadian television production.

In a similar fashion to Section 19 of the Income Tax Act in the periodical industry, the government seeks to support the broadcasting sector by directing advertising revenues to Canadian broadcasters. Bill C-58 disallows tax deductions for advertising on US border stations.

In the realm of regulation, the CRTC is the chief regulator at the federal level, with substantive intervention in the broadcasting sector. The Commission grants and renews broadcast licenses, and establishes the conditions to obtain and maintain a license to broadcast. Canadian content regulations constitute one of the central conditions of broadcasting in Canada: "Lifting the veil on licensing and Canadian content reveals a complex continuous auction of the right to broadcast with payments adjusted to circumstances. The means of payment is Canadian content commitments."⁴⁰

In the conventional broadcasting sector and the pay television and specialty channel sectors, the CRTC requires licensees to televise 60 percent Canadian programming on a yearly basis and 50 percent during prime time hours (6pm to midnight). The CRTC may adjust this base regulation up or down depending on the licensee's financial circumstances and the CRTC's assessment of the extent to which the broadcaster's overall programming is sufficiently Canadian. The CRTC defines what

constitutes a Canadian program through a points system that allocates points to an individual program based on the nationality of key personnel (writers, directors, producers, performers, etc.) the percentage of expenditures paid to Canadians, and the percentage of expenditures spent in Canada.

In addition to regulating commercial broadcasters and specialty and pay television channels, the CRTC also regulates the operations of cable and other distribution undertakings (e.g., wireless cable systems and DTH satellite systems). For cable companies, the CRTC governs the range of channels the firms can carry on their basic and discretionary cable service tiers. Most firms must carry Canadian specialty channels licensed before 1993 on the basic tier and carry specialty channels licensed after 1993 on discretionary tiers (unless the cable company and the specialty channel can agree on terms to offer the channel on the basic tier). "Linkage rules" regulate cable operators' carriage of foreign services such as the Nashville Network, CNN and the A&E Network, by requiring firms to carry a certain proportion of Canadian specialty services in order to qualify to carry foreign services.

The "3+1 policy" is a further policy governing the range of channels cable operators can provide on their various service tiers. Enacted in 1979, the policy establishes that cable operators can import the signals of NBC, CBS, ABC, and PBS on the basic cable tier. In 1994, the Commission altered the policy to allow cable operators to carry the Fox Network along with two of the other commercial networks as one of the

⁴⁰ Acheson and Maule, *Much Ado About Culture*, 154.

3 in the 3+1 (PBS is the "+1"). Cable companies can then offer the fourth commercial network on a discretionary cable service tier.

Regulatory intervention in the cable sector also includes "priority carriage" (or "simultaneous substitution") provisions, which require cable companies to substitute Canadian television signals for US signals when stations in both countries broadcast the same program simultaneously. Simultaneous substitution also applies to the satellite broadcasting sector although in this case, the CRTC adopts a broader meaning of the term "simultaneous". When the CRTC first licensed satellite broadcasters in 1995, it required them to accord priority carriage to domestic programs if a foreign programmer offered an identical program within the same week.

A final measure regulating Canadian content in the broadcasting sector relates to specialty channels. The Commission enacted a policy in 1984 regarding the licensing of these channels that accords licensing priority to Canadian (over American) specialty services. As discussed above, this policy gave rise to a bilateral trade dispute between Canada and the United States in 1994, when the Commission terminated Country Music Television's licensing eligibility in favour of New Country Television, a new Canadian specialty channel. Following this dispute, the CRTC relaxed the eligibility requirements for foreign specialty channels, stating that the Commission would not generally revoke eligibility of a foreign channel if Canadian interests subsequently launched a competitive offering.

The CRTC oversees foreign ownership and control in the broadcasting sector (in contrast to the publishing and other cultural industries subsectors, where the Minister of Canadian Heritage now handles foreign investment matters). Ownership changes require the approval of the CRTC, foreign investors may not control broadcasting firms in Canada, and ownership restrictions vary depending on the nature of ownership. Up until 1987, the CRTC required Canadians to own 80 percent of the voting stock of broadcasting firms but following a policy change at that time, there is more scope for foreign ownership. Canadians must still own 80 percent of the shares, but now foreign firms may own up to 33.3 percent of the holding company of a Canadian broadcaster (regulations prohibit the holding company from being publicly traded). This latter firm can then own 80 percent of the broadcasting company. In addition, foreign investors can now own up to 20 percent of broadcasters at the licensing level. In combination with the ownership regulations pertaining to holding companies' ownership of broadcasting concerns, the resulting permissible level of foreign ownership in a broadcasting firm is now 44 percent.

With regards to the copyright regime, one of the most notable provisions originates in the CUSFTA, which established retransmission rights in the broadcasting sector. Article 2006 establishes program retransmission rights requiring Canadian firms to pay US broadcasters for retransmitting their programs. As Chapter 5 discusses, this provision addressed an outstanding trade irritant for the Americans: Canadian

broadcasters were picking up and retransmitting American programs without making royalty payments to the program rights holders.

Film Distribution

Film distribution refers not only to distributing films for theatrical exhibition, but also to their distribution to pay and conventional television, and to wholesale and retail sales of videocassettes for home viewing. In Canada, distribution to movie theatres has traditionally provoked heated policy debate, as foreign firms and foreign products tend to dominate the marketplace (see below). Table 11 shows industry revenues, market share of Canadian products in the film distribution sector, and market share of Canadian-controlled firms for the period 1991-92 to 1997-98.

Table 11: Selected Indicators for the Film Distribution Industry

Indicator	1991-92	1994-95	1997-98
Total Revenues (\$ millions)	1,263	1,618	1,821
Theatrical	178	231	277
Pay and conventional TV	345	361	400
Home video and wholesaling	646	874	937
Market share of Canadian productions (percent)	7.3	10.1	10.2
Theatrical	2.7	3.4	2.0
Pay and conventional TV	14.2	13.4	15.9
Home video and wholesaling ⁴¹	0.5	0.7	1.0
Market share of Canadian-controlled companies	56.4	61.9	54.8
Theatrical	13.3	19.2	20.9
Pay and conventional TV	42.6	60.0	57.4
Home video and wholesaling	70.6	68.2	54.7

Statistics Canada, *Canadian Culture in Perspective: A Statistical Overview: 2000 edition*, Catalogue no. 87-211-XIB (Ottawa: Minister of Industry, 2000), Table 4.4.

⁴¹ In 1991-92 and 1994-95 Statistics Canada did not collect revenue data for Canadian productions in videocassette wholesaling. The figures for these years show home video revenues only.

Industry revenues are roughly half those of the private broadcasting sector, but have grown steadily over the 1990s, rising close to 50 percent from \$1.3 billion in 1991-92 to \$1.8 billion in 1997-98. Over half of these revenues derive from the home video and video-wholesaling market, with distribution to pay and conventional television and to theatres accounting for lesser, but significant revenue shares (roughly one-quarter and one-sixth of total industry revenues, respectively).

Canadian productions command a relatively small percentage market share in the country (10 percent or less). The market share of Canadian products in the theatrical and home video and wholesaling markets is particularly slim (in the 1991-92 to 1997-98 period, the market share for theatrical distribution stood at its lowest in 1997-98, at 2 percent; in the video sector, the lowest market share recorded was 0.5 percent in 1991-92). Pay and conventional television productions show a relatively higher level of market share, in the order of 15 percent, reflecting Canadian content requirements in the broadcasting sector. There are no domestic content requirements in the theatrical or video cassette markets.

The overall market share for Canadian-controlled firms ranged from 52 to 65 percent in the period shown in the table. This figure reflects stronger market shares for Canadian-controlled firms in the television and videocassette distribution sectors. In the theatrical distribution sector, meanwhile, Canadian firms account for a far lower

percentage of the market (although domestic firms' market share in this sector increased from 13.3 percent to 20.9 percent between 1991-92 and 1997-98).

Given the dominance of foreign products and foreign firms in the film distribution sector – particularly in the theatrical distribution market – the Canadian government seeks to support the Canadian-controlled portion of the industry and to increase Canadians' access to domestic film productions. In the late 1980s, under Communications Minister Flora MacDonald, the government developed a policy initiative to support the film distribution (and production) industry. The 1987 initiative proposed a licensing regime that would generally have permitted only Canadian-controlled companies to acquire the distribution rights to foreign films. As a condition of license, these firms would have been required to invest in Canadian film production. Foreign distributors would only have been permitted to distribute films they had produced or films for which they held world rights.

The government tabled the proposed legislation in 1988, but due to the objections of foreign distributors, relaxed the original 1987 policy initiative by permitting greater participation of foreign firms in film distribution.⁴² The bill did not make it through Parliament, dying on the order paper when an election was called. In the minds of some in the cultural industries, the government's failure to enact the legislation was a result of an unwritten deal made by the Canadian government with the Americans in the Canada-

⁴² Acheson and Maule, *Much Ado About Culture*, 312.

United States Free Trade Agreement negotiations to withdraw the proposed legislation.⁴³ Notwithstanding the failure to enact these policy measures, a 1988 Investment Canada directive (see below) sought to support Canadian film distributors.

The main policy measures in the film distribution sector are public expenditure and regulation. Telefilm Canada created a Distribution Fund in 1988 to extend lines of credit to Canadian distributors to support them in acquiring distribution contracts with producers of Canadian films. In 2001, Telefilm launched the new Canada Feature Film Fund, a program with the overall goal “to increase Canadian audiences in theatres for Canadian feature films, aiming to capture 5% of the domestic box office by 2006.”⁴⁴ The Fund includes support for Canadian distributors to acquire distribution rights to Canadian films and to market films for which they hold distribution rights.

The main regulatory measures to support the distribution sector are proprietary rights arrangements that seek to accord preferential treatment to Canadian film distribution companies. In 1988, an Investment Canada directive stipulated that new foreign film distribution businesses could only distribute those films for which they held proprietary rights (films for which they owned world rights or films in which they were majority investors). In response to pressure from the Hollywood majors, the government grandfathered from the directive American distribution companies operating in Canada

⁴³ One SAGIT participant held this belief, although he acknowledged, “I don’t have the smoking gun.” (Interview 1329).

prior to 1987. This directive resulted in a dispute with the Europeans in the late 1990s because Polygram, a European firm seeking to distribute films in the Canadian marketplace, maintained that the directive discriminated against foreign film distribution companies. The acquisition in 1988 of Polygram by Canadian-owned Seagrams Corporation ultimately resolved the impending dispute, by transforming the firm into a Canadian-owned corporation.

A final regulatory measure in the sector resides in the *Investment Canada Act*, which prohibits foreign takeovers of Canadian-owned and controlled film distribution companies.

Film and Television Production

The film and television production sector encompasses all of the workers and corporate interests involved in producing movies and television programs, from writers, actors, and directors, to producers, equipment operators, and casting specialists. Table 12 on the following page shows the revenues of the sector, broken down by production company exports and domestic sales, and revenues of post-production facilities (companies that duplicate audiovisual productions, and provide special effects, editing, sub-titling and like services). The table also shows production revenues for television and theatrical film.

⁴⁴Telefilm Canada website, "Canada Feature Film Fund - Development, Production and

Total sector revenues more than doubled in the early to late 1990s, from \$1 billion in 1992-93 to just over \$2 billion in 1997-98. Much of this growth accrued from rapid increases in production company exports (exports more than tripled between 1992-93 and 1997-98). Domestic sales of production firms and revenues for post-production facilities also increased substantially over the 1990s, rising from \$454 million to \$696 million for domestic production companies and from \$310 million to \$597 million for post-production facilities. These represent revenue increases of 53 and 93 percent, respectively, from 1992-93 to 1997-98.

Table 12: Selected Indicators for Film and Television Production

Indicator	1992-93	1996-97	1997-98
Revenues (\$ millions)	1,007	1,789	2,024
Production companies	697	1,285	1,427
Domestic sales	454	606	696
Export sales	132	362	429
Post-production facilities	310	504	597
Production revenue by client type ⁴⁵			
Television	NA	NA	505
Theatrical film	NA	NA	54

Source: Statistics Canada, *The Daily*, "Film, Video and Audio-Visual Production, Laboratories, and Post-Production" (Monday, April 3, 2000).

Revenues from television productions account for an important proportion of production revenues, in 1997-98, comprising more than one-third of production company earnings (television revenues made up \$505 million of production companies' \$1.4 billion revenues in 1997-98). Theatrical film represented a much smaller production

Marketing Programs," http://www.telefilm.gc.ca/03/311.asp?fond_id=1.

segment, with revenues one-tenth those of the television production segment in this same year.⁴⁶

The government of Canada supports the production of films and television programs primarily using expenditure and regulatory measures. The main funding source is Telefilm Canada,⁴⁷ which works alongside a system of tax expenditures to support film and television production in the country. Canadian content regulations in television broadcasting (described above) also constitute a significant source of support for the sector.

Telefilm Canada administers direct government expenditures for film and television production. The organization, originally established as the Canadian Film Development Corporation in 1967, helps to finance theatrical and television movies, and television productions (under the Canada Feature Film Fund and the Canadian Television Fund,⁴⁸ respectively).⁴⁹

⁴⁵ Figures for 1992-93 and 1996-97 not provided in the table source noted above.

⁴⁶ Theatrical film only refers to those films shown in movie theatres, and as such, does not include movies produced for television. These are captured in the television production figures.

⁴⁷ CRTC decisions also generate funding for film and television production by requesting or requiring broadcasters and cable operators to establish funds to support Canadian content production. This study does not examine the National Film Board, the Canadian government's public film-maker. The Board, established in 1939 to produce, distribute and promote films on Canada had a budget of \$60.6 million in 2001-2002.

⁴⁸ A portion of the funding of the Canadian Television Fund comes from the cable television sector and the direct-to-home satellite broadcasting industry.

⁴⁹ Recently, Telefilm Canada began providing support for production and distribution in the multimedia industry with the Canada New Media Fund (formerly the Multimedia Fund). As of 2001, the corporation now also supports the music industry, with the Music

In addition to direct expenditures, the government also intervenes in film and television production with tax expenditures. As noted earlier, prior to its termination in the late 1990s, the Capital Cost Allowance deduction sought to encourage investment in feature films. Currently, the chief tax expenditure in the film and television production sector is the Canadian Film or Video Production Tax Credit. The measure supports production companies by providing a tax credit of 25 percent on eligible labour expenditures up to a maximum of 48 percent of a given project budget.

Canadian content regulations are the primary means of regulatory intervention in film and television production. While Canada does not maintain screen quotas for film distribution, Canadian content regulations for television broadcasting support film and television production by generating demand for Canadian movies and television programs.

In addition to Canadian content requirements in broadcasting, there are also Canadian content regulations at the production level that delineate the conditions a production must meet to qualify as Canadian. As mentioned previously, the CRTC defines a program as Canadian using a points system that allocates points to an individual program based on the nationality of key personnel (writers, directors, producers, performers, etc.) and the percentage of expenditures paid to Canadians and spent in Canada.

Entrepreneurs Program (the MEP is part of the Canada Music Fund and is described in the section below on the sound recording and radio broadcasting sector).

The points system operates on a weighted sum basis. The regulations require that the producer be Canadian⁵⁰ and that the nationality of other key personnel sum to a total of at least six points (for example, a Canadian director could count for 2 points, a Canadian writer for 2 points, and a music composer for 1 point). With regard to expenditures, 75 percent or more of the program's personnel costs (other than those positions earning points or postproduction work) must be paid to Canadians and 75 percent or more of final preparation and processing costs must be spent in Canada.

Coproduction treaties are an additional regulatory measure in television and film production. The Canadian government maintains film, video and television coproduction agreements with close to fifty countries, including the United Kingdom, France, and Australia.⁵¹ These arrangements aim to stimulate bilateral cultural productions by establishing conditions under which firms in the signatory countries can be eligible for government programs (e.g., production subsidies) in both countries' cultural sectors. Coproductions meeting the conditions of the relevant co-production agreement (official coproductions) qualify as Canadian content for the purposes of broadcasting. This enables Canadian production firms to pool their resources and broaden their markets by working with firms in countries with which Canada maintains such treaties.

⁵⁰ The CRTC points system defines "Canadian" as either a Canadian citizen or a permanent resident. Permanent residents must have received their Record of Landing Certificate at the time they begin their work on the production. To qualify as Canadian, both Canadian citizens and permanent residents must be citizens/permanent residents for the life of the project (from filming or taping through to post-production).

In addition, the Minister of Canadian Heritage reviews foreign investment in the film and video production sector to ensure new investments are compatible with cultural policy objectives (criteria include whether the investment promotes Canadian content and whether it strengthens connections between Canadians).

Sound Recording and Radio Broadcasting⁵²

The sound recording and radio broadcasting sectors, although distinct, merit joint consideration in that they bear a close and synergistic relationship. The musical output of the sound recording sector constitutes an integral programming input to the radio broadcasting industry, and policies such as Canadian content regulations targeting radio broadcasting serve to support production in the Canadian sound recording industry. As Acheson and Maule note, "...the radio and recording industries have developed a symbiotic relationship in which the activities of each raise the value of the other."⁵³ The sound recording sector, includes record producers, as well as firms in the manufacturing, distribution, and retailing sectors of the business. Radio broadcasting, meanwhile, incorporates radio stations and pay audio services.

Tables 13 and 14 on the following pages show selected indicators for the sound recording and radio broadcasting industries. As Table 13 reveals, although the vast

⁵¹ A complete list of Canada's co-production agreements appears on the Telefilm Canada website (www.telefilm.gc.ca).

⁵² As noted in the segment on television broadcasting above, this study does not examine the government's use of public ownership (i.e., the Canadian Broadcasting Corporation) in the broadcasting sector given this dissertation's focus on the private sector component of the cultural industries.

majority of firms in the sound recording sector are Canadian-controlled, foreign-controlled firms account for the lion's share of sector revenues and are almost twice as profitable as their Canadian counterparts. Specifically, in 1998, of the 280 sound recording firms, only 17 were foreign-controlled, but these firms earned close to 90 percent of industry revenues (\$1.1 billion of the \$1.3 billion in total industry revenues). The profit margins of foreign firms far exceeded those of Canadian-controlled companies, standing at 15.2 percent, versus 8.3 percent for Canadian firms. Canadian-controlled firms' provided far greater support to Canadian artists, however -- Canadian companies produced 821 of the 1,023 new releases of Canadian musicians in 1998, a proportion of over 80 percent.

Table 13: Selected Indicators for the Sound Recording Industry, 1998

Indicator	1998
Number of companies	280
Canadian-controlled	263
Foreign-controlled	17
Total revenues (\$ millions)	1,324
Canadian-controlled	171
Foreign-controlled	1,153
Profit margin (percent)	14.3
Canadian-controlled	8.3
Foreign-controlled	15.2
Number of new releases of Canadian artists	1,023
Canadian-controlled	821
Foreign-controlled	202

Source: Statistics Canada, *Focus on Culture: Quarterly Bulletin from the Culture Statistics Program*, Vol. 13, No. 3, Catalogue no. 87-004-XIB, (Ottawa: Minister of Industry, 2002), 15.

⁵³ Acheson and Maule, *Much Ado About Culture*, 182-83.

Table 14: Selected Indicators for the Private Radio Broadcasting Industry

Indicator	1985	1990	1995	2000
Revenues (\$ millions)	579	780	780	1,028
Sales of air time	566	764	754	1,002
Net profit (loss) after income taxes	7	(26)	(4)	64

Source: Statistics Canada, Canadian Socio-Economic Information Management System II (CANSIM II), *Privately Owned Television and Radio Industry* (Table Number 3570001: Series V81157, V81158, V81164, and V81175).

The radio broadcasting sector is Canadian-owned and controlled and must meet Canadian content requirements as a condition of license (see below). The sector is roughly one-quarter the size of the private television industry, with revenues of \$1 billion in the year 2000. Revenues doubled in the 1985 to 2000 period, from \$579 million to \$1 billion and sales of air time account for virtually all of the revenues earned in the sector. The sector posted losses after income taxes for the years 1990 and 1995, but an increase in air time sales restored financial health to the sector in the year 2000.

The chief policy instruments for sound recording and radio broadcasting are direct expenditures, taxation and regulation, with Canadian content and copyright measures constituting the core of the latter-noted category. Radio interests administer direct expenditures to the sector, including the Foundation to Assist Canadian Talent on Records (FACTOR) and MusicAction. Firms in the radio broadcasting industry established these funds, with FACTOR serving the English language market and MusicAction targeting French language recording.⁵⁴ FACTOR and MusicAction support

⁵⁴ Up until 1996, the CRTC “asked” private radio broadcasters to support Canadian artists upon renewing their broadcasting license. In 1996, the Commission instituted a fee structure to support activities such as FACTOR and MusicAction (ironically, following

production of the work of songwriters and recording artists, as well as videos and promotional tours.

In May 2001, the government announced the creation of the Canada Music Fund (CMF) "to strengthen the infrastructure of the Canadian sound recording industry by offering assistance for the production, distribution and marketing of Canadian content music products."⁵⁵ The CMF comprises over half a dozen programs to support various components of the industry, including artists, entrepreneurs, record labels and music sector associations.

Tax measures in the sector include the Canadian talent development tax, blank tape levies, and, prior to CUSFTA, tariffs. The CRTC established the Canadian talent development tax in 1998, which requires a contribution of at least 6 percent of the value of a transaction when the ownership and control of a radio station changes. The resulting contribution supports the development of Canadian talent through such initiatives as FACTOR and MusicAction. The government instituted blank tape levies as part of the amendments to the Copyright Act in 1993. The government levies these taxes on the sale of blank audio tapes and earmarks them for distribution to collectives representing sound recording composers, lyricists, performers and producers. The levies, set by the Copyright Board, are a means of compensating sound recording interests for piracy.

this move, the level of broadcaster support for the recording industry dropped substantially).

⁵⁵ Department of Canadian Heritage website:

http://www.pch.gc.ca/culture/cult_ind/music.htm (accessed 11 July 2002).

Following the CUSFTA, tariffs, the final tax measure noted above, are no longer among the tax instruments in the sound recording sector. Prior to the negotiation of CUSFTA, tariffs on cultural goods such as pre-recorded disks and cassettes sought to support the Canadian sound recording sector by increasing the cost of importing American sound recordings to Canada. CUSFTA's Article 401 eliminated tariffs on a range of American cultural goods entering Canada, including pre-recorded disks and cassettes.

Canadian content requirements for radio broadcasters constitute the core support measure for the recording industry. As Acheson and Maule note, "The government initiative that most generously supports the Canadian [sound recording] industry is the Canadian content requirement for music played on radio."⁵⁶ The Commission uses what are known as the "MAPL" criteria to determine whether a recording is Canadian. The regulations look primarily to the nationality of the artists involved in the recording. To qualify as Canadian, a recording must meet at least two of the following criteria: music composed by a Canadian (M), music or lyrics performed principally by a Canadian (A), live performance recorded and broadcast in Canada (P), and lyrics written by a Canadian (L).

⁵⁶ Acheson and Maule, *Much Ado About Culture*, 180.

The CRTC requires AM radio stations to broadcast 35 percent⁵⁷ Canadian content for popular music between the hours of 6am and midnight (7 percent for other music). For FM radio, the level of required Canadian content varies depending on the nature and language of programming. Popular and country music stations, for example, must play 35 percent⁵⁸ Canadian music between the hours of 6am and midnight (this figure drops to 15 percent for stations broadcasting 50 percent or more instrumental music). French-language stations broadcasting popular music must dedicate 65 percent of their air time to music recorded in French. The content requirement for pay audio services is far lower, standing at 15 percent.

A number of amendments to Canada's copyright regime targeted the sound recording sector for support. In 1988, amendments to the Copyright Act abolished compulsory licensing for the recording of musical works. Following the NAFTA negotiations, in 1993, further amendments to the Act established neighbouring rights⁵⁹ for the sound recording sector, specifically public performing rights for performers and record producers. The public performing right requires radio broadcasters (and other interests using musical works for commercial purposes such as bars and restaurant owners) to pay performers and record producers for the right to play their works. The

⁵⁷ This figure stood at 30 percent up until 1998, at which time the Commission raised the rate.

⁵⁸ This figure also stood at 30 percent up until the CRTC's decision in 1998 to raise the rate.

⁵⁹ "Neighbouring rights" refer to those rights that "neighbour" on copyright, in this case, the right to receive compensation for public performances of the rights holders' work.

monies collected generate a fund that the government divides among performers and record producers.

CONCLUSIONS

The Canadian government locates the rationale for cultural industries policy in the challenges of cultural production in a country with a small and diverse population and the challenges of cultural production in a country located adjacent to a cultural industries powerhouse. In response to these challenges, the government seeks to promote Canadians' production of, distribution of, and access to domestic cultural content. It employs a wide range of policy instruments to pursue these objectives, most notably direct expenditures, tax measures, regulation, and public ownership.

A unique mix of policy instruments characterizes government intervention in each cultural industries subsector. In the periodical sector, for example, the government provides direct subsidies, seeks to direct advertising revenues to Canadian firms, and, prior to the trade dispute over the Canadian edition of *Sports Illustrated*, seized prohibited American split-run magazines at the Canadian border. This framework differs from the broadcasting sector, meanwhile, where the government maintains foreign ownership restrictions, prohibits foreign control of broadcasting companies, and requires broadcasters to air Canadian content. Instruments in the sound recording sector, meanwhile, differ yet again. There are no prohibitions on foreign control in the sector and no attempts to channel revenues from other industries to the sector. Rather, the use

of direct subsidies and Canadian content requirements in broadcasting support the industry. Despite this diversity in instrument choice across the cultural industries, however, the various policy interventions share the common goal of supporting the creation, production, distribution, and exhibition of domestic cultural goods and services.

Policy measures have sought to support these industries in the face of foreign – especially American – firms. As the industry profiles in this chapter evidenced, the various sectors differ in size and revenue sources. Advertising revenues constitute an important source of earnings for the periodical, newspaper and broadcasting sector. In cable television, meanwhile, subscription revenues comprise the majority of industry revenues. Exports also represent important revenue sources for a number of the subsectors, most notably in the book publishing and audiovisual production sectors.

In addition to the overall policy goals the cultural industries share, they also face the common challenge of maintaining government support for the sector in an era of globalization and trade liberalization. Trade liberalization and technology challenge the Canadian government's capacity to, in the first instance, discriminate in favour of domestic firms and cultural products, and in the second, maintain effective regulatory frameworks in the face of technological change. The coming chapters examine the reaction of cultural industries representatives to these pressures, and to government efforts to consult the industry via the Sectoral Advisory Groups on International Trade.

CHAPTER 5

THE ARTS AND CULTURAL INDUSTRIES SAGIT AND THE CANADA-UNITED STATES FREE TRADE AGREEMENT

INTRODUCTION

The consultation period preceding the Canada-United States Free Trade Agreement was the federal government's first experience with the SAGITs. The government established the groups primarily for the CUSFTA negotiations that began formally in May 1986. As described in Chapter 3, existing empirical research on the SAGITs at the time of the CUSFTA negotiations suggests a high level of engagement of participants in the process. Both collaborative and conflictual dynamics among group members and between SAGIT members and government officials also seems to have characterized the process.

This chapter examines the level and nature of participant engagement in the Arts and Cultural Industries SAGIT at the time of the CUSFTA negotiations. The chapter proceeds in three sections. The first begins by discussing the key events and issues respecting the cultural industries in the pre-negotiation and negotiation phases of the CUSFTA. The section adopts a two-level negotiating framework to illuminate the contradictory political economic imperatives facing the Canadian government with respect to the free trade negotiations on the cultural industries. The second portion of the chapter examines private sector participation in the Arts and Cultural Industries SAGIT

looking at the role of state behaviour, alternative channels and reframing processes in turn. The third segment of the chapter sets the stage for the forthcoming chapter on the NAFTA negotiations by analysing CUSFTA negotiation outcomes in the cultural industries sector and industry response to the agreement's provisions on culture. Conclusions follow. (The timeline in Appendix B summarizes the key events respecting the CUSFTA negotiations as well as major SAGIT milestones and the main cultural trade disputes taking place at the time of the CUSFTA trade talks.)

THE CULTURAL INDUSTRIES IN THE CUSFTA NEGOTIATIONS

The shift from domestic-level to international-level negotiations for domestic cultural policy-making is a relatively recent phenomenon. The CUSFTA negotiations were the first set of international trade negotiations to raise the possibility that Canada's cultural policies could become subject to international trade obligations.¹ As the following paragraphs discuss, throughout these negotiations, the Canadian government faced contradictory imperatives in its domestic and bilateral environments. In its domestic environment, there was strong pressure to exclude the cultural industries from the negotiating agenda, while bilaterally, it faced contradictory demands from the United States to negotiate provisions for the cultural industries.

Faced with these non-overlapping win-sets, the Canadian government adopted a somewhat ambiguous stance on the position of the cultural industries in the period

leading up to and during the negotiations. Moreover, given the requirement for domestic ratification of the agreement, several senior government officials portrayed the CUSFTA provisions on the cultural industries to the Canadian public and members of the cultural sector as full-scale protection for the sector, while some legal analyses of the accord maintain that the CUSFTA cultural exemption offers limited protection to the cultural industries from the agreement's disciplines. The final section of this chapter examines the cultural industries exemption in the CUSFTA in more detail, characterizing it as a double-edged provision.

In September 1985, the Canadian and American governments reached formal agreement to launch comprehensive bilateral free trade negotiations in May of the following year. At the time of the fall 1985 announcement, it does not appear that the Canadian government anticipated negotiations in the cultural sector would prove to be a contentious domestic political issue. Although the government was working throughout the fall to defuse the concerns of those who believed that a free trade deal would imperil Canada's cultural sovereignty,² it seems the government believed that negotiating provisions on cultural trade was within the ambit of its domestic win-set. In early November 1985, a leaked government memo suggested the possibility of using cultural

¹ W.A. Dymond and Michael M. Hart, "Abundant Paradox: the Trade and Culture Debate," paper prepared for Conference on Trade and Culture (Ottawa: Centre for Trade Policy and Law, November 28, 2001), 4.

² See Michael Hart (with Bill Dymond and Colin Robertson), *Decision at Midnight: Inside the Canada-US Free-Trade Negotiations* (Vancouver: UBC Press, 1994), 110.

programs as “trade-offs” in the negotiations.³ The leaked document sparked significant political and media attention, leading to a flood of questions from opposition parties in the House of Commons as well as front-page media coverage. While Prime Minister Brian Mulroney insisted that a Canada-US trade deal would not threaten Canada’s “unique cultural identity,” External Affairs Minister Joe Clark indicated that Canada should pursue negotiations in those cultural industries sectors (he mentioned film and publishing) that could benefit from greater access to the American marketplace.⁴

Some of the major cross-sectoral business associations in Canada (the Business Council on National Issues, the Conference Board of Canada, and the Canadian Chamber of Commerce) expressed their support in the fall of 1985 for including the cultural industries in the negotiations,⁵ but many representatives of the cultural industries were squarely against it. Given “the tremendous influence cultural nationalists can exert on the media,”⁶ External Affairs Minister Joe Clark, Minister for International Trade James Kelleher and Interim Minister of Communications Benoit Bouchard convened a meeting in late November with some of the leading members of Canada’s cultural industries. For the most vehement of the latter, Hart notes, “nothing short of repudiating free trade could appease them.”⁷

³ Charlotte Montgomery, “Government Indicates Film, Books to be Part of Trade Talks with US,” *The Globe and Mail*, November 6, 1985, A1-A2.

⁴ Ibid., A1,A2.

⁵ John Partridge, “Business Lends Little Support to Bookmen,” *The Globe and Mail*, November 11, 1985, B1.

⁶ Hart, *Decision at Midnight*, 110.

The sector repeated this message in the Arts and Cultural Industries SAGIT, established in the summer of 1986. The SAGIT, chaired by a Québec film producer, included both business interests and performing artists among its members. In the former category were senior executives from Baton Broadcasting, Maclean Hunter Limited, and the Southam Newspaper Group, while on the artistic and creative side, the SAGIT included a senior representative from the National Film Board, the Director of the Canadian Conference of the Arts, an Acadian writer, and a lyricist from Québec. Notwithstanding the broad range of subsectoral and creative interests represented in the group, it was united in its opposition to negotiating provisions for the cultural industries.⁸ The following section on participant engagement in the SAGIT process investigates the level and nature of participant involvement in the group, as well as the factors accounting for these outcomes of participation.

In addition to the pressure on the government from the SAGIT, leading members of the corporate cultural community established an advocacy group opposed to the inclusion of culture on the negotiating agenda. Under the name of the Canadian Culture/Communications Industries Committee (the CCIC), this influential group of cultural industries representatives counted among its members the president of the Canadian Broadcasting Corporation, the heads of Télémédia Communications Inc., Astral

⁷ Ibid.

⁸ Gordon Ritchie, *Wrestling With the Elephant: The Inside Story of the Canada-US Trade Wars* (Toronto: Macfarlane, Walter & Ross, 1997), 215-217.

Communications, as well as the heads of the major television, broadcasting, film production and sound recording firms in Canada.⁹

The CCIC initiated a meeting with Simon Reisman and Gordon Ritchie, Canada's Chief and Deputy Chief Negotiators of the CUSFTA (respectively), at which they mounted, in Ritchie's view, a well-reasoned and forceful argument against negotiating on the cultural industries. The CCIC was not opposed to free trade *per se*, but rather, was adamant that "if these free trade rules were applied to their industries, the result would be to strip away the last vestiges of Canadian cultural expression."¹⁰ The CCIC urged the negotiators to find a way to maintain Canada's cultural policy-making capacity. The following section of this chapter further examines the CCIC, as it represented an alternative channel for cultural interests in the private sector to lobby the federal government.

In response to these multiple pleas for exclusion of the cultural industries from the negotiations, the Canadian government repeatedly reassured the Canadian polity and declared to the Americans that Canada's culture would not be the subject of negotiations. Beginning in the fall of 1985, speeches delivered in the US by both the Prime Minister

⁹ Ibid, 217.

¹⁰ Ibid, 217.

and the External Affairs Minister stated that culture was not on the negotiating table.¹¹

Domestically, the Minister of Communications made similar assurances.¹²

But while key politicians assured Canadians that Canada's cultural sovereignty and cultural identity would not be on the negotiating table, it was not clear whether the cultural industries themselves would be included in the trade talks.¹³ As mentioned above, at the time of the November 1985 document leak, Prime Minister Brian Mulroney maintained that Canada's unique cultural identity would not be "at issue" in the negotiations, while External Affairs Minister Joe Clark refused to exclude the cultural industries from the trade talks, pointing to potential opportunities for the film and publishing sectors. Other federal ministers also noted that the negotiations could address such issues as tariff barriers and subsidies impacting the cultural industries.¹⁴ Moreover, in June 1986, Minister of Communications Marcel Masse acknowledged that Canada

¹¹ Hart, *Decision at Midnight*, 110.

¹² Ministère des Communications, "Notes pour la déclaration d'ouverture par l'honorable Benoît Bouchard à la Conférence sur la radiodiffusion de la Conférence canadienne des arts," *Communications*, 15 octobre 1985, 7.

¹³ Ivan Bernier, "Les dispositions de l'Accord de libre-échange nord-américain relatives à la propriété intellectuelle et la clause d'exemption culturelle," dans *ALENA, droit d'auteur et droits voisins : impact de l'ALENA sur le droit d'auteur, les droits voisins et les industries culturelles* (Montréal : Actes de la journée d'étude, Association littéraire et artistique canadienne inc. (ALAI CANADA), le 15 janvier 1994), 18.

¹⁴ "L'insistance du Canada à vouloir protéger sa souveraineté culturelle inquiète les américains," *Le Devoir*, 7 mai 1986, 2.

might have to discuss culture in the negotiations.¹⁵ The government maintained this somewhat ambiguous position until the conclusion of the negotiations.¹⁶

While at its domestic table, the Canadian government bore significant pressure to exclude the cultural industries from the agenda of the upcoming negotiations, bilaterally, it faced powerful contradictory demands from the United States. As Dymond and Hart point out, the number and intensity of disputes with the United States over Canada's cultural policies had been rising since the 1960s. These included Canadian income tax measures for advertising that discriminated against American firms in the magazine sector in the 1960s, similar discriminatory income tax measures in the broadcasting sector in the 1970s, and the forced divestiture of a Canadian book publishing firm in the 1980s. For the Americans, the upcoming negotiations presented an opportunity to address these trade irritants: "The US certainly saw the negotiations as an opportunity to seek changes in Canadian policies that limited access to the Canadian market."¹⁷

Before the negotiations had even begun, the US government stated that it wanted cultural industries on the bargaining table.¹⁸ Among the high-profile American politicians and senior officials making statements to this effect were Secretary of State

¹⁵ "Masse reconnaît que le Canada pourrait être amené à discuter le dossier culturel," *Le Devoir*, 29 juin 1986, A2.

¹⁶ Bernier, "Les dispositions," 18. While Bernier does not seek to explain why the government appeared to maintain a somewhat ambiguous position on the cultural industries, as described below, one of the SAGIT participants interviewed for this study felt that divisions within the federal Cabinet (particularly between Marcel Masse and Brian Mulroney) accounted for the relative ambiguity of the government's position.

¹⁷ Dymond and Hart, "Abundant Paradox," 5.

George Shultz, US Ambassador to Canada Thomas Niles, and Chief US Negotiator Peter Murphy, who even went so far as to say that if the cultural industries were excluded from the upcoming negotiations, the free trade agreement itself would be of less interest to the United States.¹⁹ During the negotiations, in a speech to a Washington conference on Canada-US trade, Murphy urged Canada to negotiate on the cultural industries.²⁰ For the Americans, Canada's concerns over culture were a form of disguised protectionism, seeking to shelter the country's cultural industries from American competition.²¹

In the United States, the cultural industries wield significant political economic power. As one of the largest export industries in a country with a persistent trade deficit, this industry sector can wield considerable influence in the American political system. The most powerful lobby in the industry is the Motion Picture Association of America (MPAA), representing the interests of the major Hollywood film studios. The MPAA's well-executed lobby campaigns are generally successful owing in large measure to its ongoing and seemingly secure access to top American government decision-makers.²² Moreover, its long-time President, Jack Valenti, had a personal relationship with Ronald Reagan, President of the United States at the time of the CUSFTA negotiations. With an eye to the upcoming Uruguay Round of multilateral trade negotiations, American negotiators pressed hard for inclusion of the cultural industries in the CUSFTA talks.

¹⁸ Montgomery, "Government Indicates," A2.

¹⁹ Bernier, "Les dispositions," 18-19.

²⁰ Jennifer Lewington, "Murphy Denies Talks Threaten Canadian Culture," *The Globe and Mail*, January 14, 1987, B4.

²¹ "L'insistance du Canada," *Le Devoir*.

The American film industry's primary objective for Uruguay was to secure greater access to the lucrative European audio-visual market, and the industry feared setting a damaging precedent at CUSFTA if the cultural industries were excluded from the talks.²³

In sum, the cultural industries became a highly contentious political issue both domestically and bilaterally for the Canadian government. Domestically, the government faced mounting pressure to exclude the sector from the trade talks. As Dymond and Hart note, "nothing short of a general exemption would provide a usable weapon to counter the attack of the cultural industries on the agreement."²⁴ Moreover, domestic pressure intensified as public support for the negotiations began to soften, in part because of Canadians' concerns over the country's cultural sovereignty. Support for free trade declined from 61% in January 1986 to 50% in February 1987 to 44% in July 1987.²⁵

Furthermore, a public issues analysis conducted by pollster Martin Goldfarb in the summer of 1987 identified nationalism, integrity and fairness as predominant themes for Canadians.²⁶ The theme of nationalism resonated strongly in the free trade debate, with many Canadians fearing that free trade would change the "basic nature" of Canada and

²² Charles Trueheart, "Mr. Valenti Stays in Washington," *The Washington Post*, July 14, 1991, W10.

²³ Michael Braun and Parker Leigh, "Trade in Culture: Consumable Product or Cherished Articulation of a Nation's Soul?" *Denver Journal of International Law and Policy* 22, 1 (Fall 1993), 155-191.

²⁴ Dymond and Hart, "Abundant Paradox," 5.

²⁵ "Canadians Divided on Free Trade, New Poll Shows," *The Toronto Star*, August 4, 1987, A4.

²⁶ Martin Goldfarb, "Major Public Issues Dominated by Three Themes," *The Toronto Star*, July 5, 1987, B1.

that under free trade, "Canadian cultural industries will either disappear because they cannot compete successfully with U.S. firms or else they will be taken over by Americans."²⁷ Goldfarb maintained that the Mulroney government's fate would depend on how effectively it dealt with these themes. For the Conservatives, with the support of only 26 percent of decided voters (compared to the New Democratic Party's 40 percent and the Liberals' 32 percent),²⁸ its handling of culture in the free trade negotiations became an important electoral consideration.

Bilaterally, the Americans continued to press hard for negotiations on the cultural industries, adamant that Canada's reservations to negotiate in this area were founded in protectionist sentiment. The Canadian government was between a domestic rock and a bilateral hard place. These contradictory interests were visibly juxtaposed at a February 1987 conference on free trade sponsored jointly by the US-based Brookings Institution and the Canadian-based Institute for Research on Public Policy. At the closing dinner of the conference, the United States Trade Representative Clayton Yeutter, challenged Canadians to put their culture on the negotiating table, stating, "I'm prepared to have America's culture on the table and take the risk of having it damaged by Canadian influence after a free trade arrangement. I hope that Canada is prepared to run that risk too."²⁹ Newspaper editorials across the country strongly criticized Yeutter's remarks, and Prime Minister Brian Mulroney did his best to counter the potentially damaging effects of this comment on an already jittery Canadian public, referring to Yeutter's

²⁷ Ibid.

²⁸ "Battering in Fall Election Predicted for Tories," *The Globe and Mail*, 4 July 1987, A5.

“stunning ignorance.”³⁰ Following this, the Americans and Canadians agreed to refrain from public declarations on culture until the conclusion of the negotiations.³¹

Confronted with these seemingly non-overlapping win-sets, the Canadian government adopted a somewhat ambiguous position on the cultural industries, on the one hand, stating that Canada’s identity and cultural sovereignty were non-negotiable items, while on the other, refraining from saying that the cultural industries were off the negotiating table for fear of jeopardizing the success of the negotiations: “...en effet, on vit le Canada affirmant de façon catégorique que la préservation de l’identité et de la souveraineté culturelles du Canada constitue une question non négociable, mais sans exiger pour autant que les industries culturelles en tant que telles soient exclues de la table des négociations, de peur apparemment de compromettre le succès de ces mêmes négociations...”³² As the third section of this chapter on negotiation outcomes discusses, the CUSFTA exempts the cultural industries from the provisions of the agreement (with four exceptions), but includes a broad right of retaliation for the Americans, in the event the Canadian government maintains or enacts policy measures inconsistent with the CUSFTA.

²⁹ As quoted in Hart, *Decision at Midnight*, 219.

³⁰ Ibid., 220.

³¹ Bernier, “Les dispositions,” 19.

³² Ibid.

PARTICIPANT ENGAGEMENT IN THE SAGIT PROCESS

This section begins by describing the level and nature of participant engagement in the Arts and Cultural Industries SAGIT. It then examines the factors accounting for the outcomes of participation at CUSFTA with a view to assessing the consistency of the findings with the working hypotheses proposed in Chapter 2. As Chapter 2 explained, the dissertation tests the hypotheses that state behaviour and alternative channels constitute crucial variables in accounting for *participant engagement levels*. In particular, the study proposes that where participants perceive that state conduct favours their interests, they will exhibit active engagement levels regardless of the number of alternative channels. In contrast, when consultation members find state behaviour adversely affects their interests, the quantity and quality of alternative channels will shape their level of engagement. If they perceive there are few promising alternative channels, they will tend to actively engage in the consultation, whereas if they believe there are many prospective alternate channels, it is more likely that they will disengage from the consultation. Participants may passively engage in consultations for strategic or other purposes (e.g., information acquisition, intrasectoral networking, as a delay tactic, etc.).

With respect to the *nature of engagement*, this section of the chapter tests the hypothesis elaborated in Chapter 2 that where reframing processes generate shared threats or common opportunities for consultation participants, they will tend to display intrasectoral collaboration (intrasectoral conflict) when the threat or opportunity aligns

(uncouples) their policy interests. Passively engaged participants can foster intrasectoral collaboration where it serves to reduce active conflict within the group.

The dissertation further hypothesizes that state behaviour will tend to shape the nature of sector-governmental engagement. When participants find that state conduct bears negatively (positively) on their interests, sector-governmental conflict (collaboration) is likely to obtain. Passively engaged members of a consultation may facilitate sector-governmental collaboration if they choose not to visibly conflict with the government.

The findings reported in this section draw primarily from interviews with SAGIT participants, government officials involved in the SAGIT process, and representatives of the broader cultural industries policy community. The section also includes relevant secondary sources to deepen the analysis. As the paragraphs below describe, during the free trade negotiations, the SAGIT exhibited active levels of engagement, and displayed intrasectoral collaboration and sector-governmental conflict. Chapter 2 hypothesized that these outcomes would obtain where participants perceive state behaviour to be inimical to their interests (I), where they believe they possess few alternative channels (F), and in the presence of reframing processes that align their interests (A).

The analysis reveals that the consultation outcomes at CUSFTA show a high level of consistency with the dissertation's working hypotheses. Many SAGIT participants felt

that the behaviour of the state did not serve their interests, but lacking more promising alternative channels, they continued to actively participate in the SAGIT. Moreover, the experience of the SAGIT during this consultation period provides an intriguing illustration of the endogeneity of alternative channels. A group of key firms in the cultural industries – including a number of SAGIT members who felt the consultation did not sufficiently serve their interests – created the Canadian Culture/Communications Industries Committee to channel their views to the government.

The intrasectoral and sector-governmental dynamics of the SAGIT also appear to support the hypotheses of the dissertation. While reframing processes, in the form of trade disputes, appeared to exert only marginal influence on industry engagement in the SAGIT, trade liberalization, as represented by the Canada United States Free Trade Agreement, constituted a powerful common threat that aligned participant interests and served to promote intrasectoral collaboration among the diverse group of SAGIT members. At the sector-governmental level, participant perceptions of state behaviour -- particularly members who felt that public officials lacked concern for cultural matters in trade -- substantially influenced the sector-governmental dynamics of the SAGIT and accounted to a considerable degree for the conflictual relations between the group and the government. The empirical findings respecting the SAGIT's conflictual relations with the government conform well with the dissertation's hypotheses, i.e., where participants perceive state behaviour as inimical to their interests, conflictual sector-governmental relations will ensue.

Level of Engagement

The SAGIT comprised fourteen members³³ who, as shown in Table 15 below, represented both creative and business interests, as well as the diversity of cultural industries subsectors. Of the creative interests, the majority were (or had been) practising artists, while of the industry representatives, the vast majority were the chief executives of their organizations. The SAGIT spanned the intrasectoral diversity of the cultural sector, ranging from representatives of the book publishing sector, to those in film production and distribution, to cable television interests, to representatives from the visual arts sector.

Table 15:
CUSFTA Arts and Cultural Industries SAGIT – Membership Distribution

Creative Interests	Industry Subsectors ³⁴			
	Film	Television & Radio	Print Media	Visual Arts
4	3	3	3	1

Virtually all SAGIT members interviewed for this study reported high levels of active engagement in the consultations throughout the CUSFTA negotiations.³⁵

³³ The original list of SAGIT members included fifteen members, one of whom indicated he had not been a member of the group.

³⁴ Several of these corporations operated across sub-sectoral lines (i.e., were horizontally integrated), but the majority of the firms on the SAGIT operated in a single industry subsector only. The table categorizes horizontally integrated corporations into the main sector of their operations.

³⁵ The government announced the creation of the SAGITs in early 1986, prior to the formal commencement of the CUSFTA negotiations in May of that year, but many of the SAGITs did not hold their first meeting until the negotiations were underway. This delay did not appear to concern SAGIT members or non-members interviewed for this study. One SAGIT participant indicated that a number of roundtables on the subject of culture

Consultation participants noted that the group met in Ottawa on average three to four times per year in the CUSFTA period and indicated that they attended the meetings of the SAGIT and actively participated in group discussions. They indicated that their fellow SAGIT members also displayed high levels of engagement, putting forward their points of view and maintaining an active membership in the group. Only one SAGIT participant during this first consultation period adopted a passive stance in the consultation.³⁶ With the exception of this individual, all SAGIT members spoke positively of their involvement in the consultation, describing it as interesting, enjoyable, and useful, and noting that participation was “the essential thing to do.” None of the SAGIT participants indicated that they chose not to attend meetings, i.e., no SAGIT members disengaged from the process.

Two participants indicated that they maintained contact with other SAGIT members following the termination of their involvement with the group,³⁷ while the others appeared to view their involvement in the SAGIT as a more isolated experience. One individual stated that he had not taken part in any government consultations or

had taken place prior to the operationalization of the Arts and Culture SAGIT (Interview 1307).

³⁶ Interview 1325. As explained below, this individual’s choice to engage passively derived from his belief that the SAGIT possessed virtually no policy influence. This SAGIT member pursued his policy interests through alternative channels but continued to engage passively for strategic reasons.

³⁷ Interviews 1307 and 1338. Many of the SAGIT members come into contact with one another as a consequence of working in the same professional milieu, but only two of the participants indicated that they maintained contact with former SAGIT colleagues as a result of their experience together on the SAGIT.

maintained contact with any of his fellow SAGIT colleagues subsequent to his membership in the group.³⁸

When queried as to the reasons for their high levels of participation, SAGIT members identified a variety of factors. Most felt very strongly that cultural issues were not “on the radar screen” of either the federal government or of the Canadian public and firmly believed that it was imperative to defend Canada’s culture in the upcoming negotiations.³⁹ They viewed their participation as a means of raising the profile of cultural issues in the ongoing negotiations and of defending their idea that culture must be protected in and exempted from the agreement. In this sense, they believed that one of the long term benefits of their participation in the SAGIT was to educate both elected and appointed government officials and the Canadian public about the importance of cultural issues to the sector and to the negotiations. They felt their participation served to raise the public and political profile of cultural issues in trade.

Others engaged in the process with less concrete policy objectives. These individuals viewed their participation as a means of bringing to the SAGIT table the expertise of the sub-sector they represented.⁴⁰ One of these participants noted that he was the only SAGIT member with expertise in a particular subsector, and viewed his

³⁸ There did not appear to be any discernible pattern characterizing those members who maintained contact with former SAGIT colleagues versus those who did not.

³⁹ Interviews 1307, 1328, 1334, and 1338.

⁴⁰ Interviews 1308 and 1325.

participation as essential to bring the knowledge and interests of that subsector to the consultation discussions.

Only one individual stated they he had no concrete policy objectives with respect to the consultations and that as a result had no particular message to deliver.⁴¹ This member attributed his active participation to his interest in some of the core dynamics of the group, which, as the following section discusses, were characterized by the arts practitioner members and the private sector members, “talking past one another.”⁴² This SAGIT member felt that his primary utility to or role in the group was to assist these two wings of the SAGIT to understand each others’ perspectives.

The sections below on the role of state, alternative channels, and reframing processes further analyse and discuss the factors accounting for the high levels of participant engagement in the SAGIT during the CUSFTA negotiations. But first, the following section examines more closely the nature of engagement in the SAGIT.

Nature of Engagement

Members of the Arts and Cultural Industries SAGIT, although frequently in active conflict with one another, indicated that they worked collaboratively to develop common positions among the group. Conflict also characterized relations between group members and the government, but in the case of the SAGIT-government relationship, there was

⁴¹ Interview 1309.

⁴² Ibid.

less collaboration than at the intrasectoral level. As such, the SAGIT consultations at CUSFTA exhibited collaborative intrasectoral dynamics and conflictual sector-governmental dynamics.

SAGIT members frequently remarked on the breadth of diversity of the group's membership, noting its diversity across two dimensions (see Figure 6 on the following page). First, as noted previously, the membership of the group bridged the two poles of the creative process because it involved both creators (artists) and industry representatives. Second, the SAGIT spanned the intrasectoral diversity of the cultural sector, including representatives from the publishing, film, broadcasting, and visual arts sectors.

SAGIT members indicated that these two dimensions of diversity generated conflict within the SAGIT -- but for different reasons. With respect to the first dimension, SAGIT participants attributed the discord between the two groups to their differences in attitude and training. The SAGIT's arts practitioners generally opposed the free trade agreement *in toto* because they believed it would negatively impact the very core of Canadian culture, expression and identity. The representatives of the cultural industries, meanwhile, framed the issues from the perspective of business and trade, not necessarily opposing the free trade agreement itself, but seeking protection for their

sector from American competition. For the most part, the debates between these groups involved them “talking past each other.”⁴³

Figure 6: Diversity in SAGIT Membership at CUSFTA

Two of the industry participants spoke of the creative interests on the SAGIT in derogatory terms.⁴⁴ One referred to them as “artsy fartsies” and stated that “artists don’t have a business sense and this [the CUSFTA] was a business decision.” The other, when referring to these two wings of the SAGIT, drew the distinction between “responsible businesspeople” and “lunatic flagwavers” and linked the potential policy influence of the SAGIT to whether the government perceived SAGIT members as the former (more policy influence) or the latter (no policy influence). The following section returns to this point.

⁴³ Interview 1309.

⁴⁴ Interviews 1308 and 1334

Intrasectoral diversity also engendered conflict because trade liberalization posed different patterns of challenge and opportunity for the various subsectors of the cultural industries. In the film industry, for example, American domination of Canadian screen time challenged Canadian film-makers, but “runaway productions”⁴⁵ presented opportunities for some segments of the industry. For book publishing, the upcoming negotiations presented a different set of challenges and opportunities, because book publishers benefited from foreign titles (and therefore from trade) but stood potentially to suffer from greater American competition. In television, meanwhile, importers of American programs benefited from trade, but faced the potential challenges of retransmission rights for American broadcasters and reduced foreign ownership restrictions.

Notwithstanding these divisions among the SAGIT membership, all SAGIT members interviewed for this study stated that the group reached general consensus that negotiations should not take place on the cultural industries. A number of participants indicated they were impressed with the ability and willingness of the participants to work together to reach consensus in spite of their diversity.⁴⁶ Interestingly, as mentioned above, one SAGIT member felt that his role in the group was to try to find common ground among members, particularly between the creative interests and cultural industries representatives, noting that “in meetings like that, the real possibilities reside in

⁴⁵ The term referring to American film-makers shooting films in Canada rather than in the US, which benefits some segments of the Canadian film industry.

⁴⁶ Interviews 1307, 1309, and 1338.

those who are the listeners.”⁴⁷ This participant attempted to be a translator of sorts between these two wings of the SAGIT, noting that this effort yielded varying levels of success. The concluding chapter further examines the importance and potential utility of the involvement in deliberative consultations of a participant who might serve as an informal facilitator.

In addition to the conflict between SAGIT members, tension also characterized the group’s relations with government officials. The majority of consultation participants remarked on the conflict between the group and TNO officials, as well as clashes with officials in the broader Department of External Affairs.⁴⁸ With respect to the former, participants noted the difficulty of trying to convince the likes of Simon Reisman to exclude the cultural industries from the CUSFTA negotiations. Reisman’s Deputy Chief Negotiator Gordon Ritchie described him as possessing an “instinctive aversion to nationalism and protectionism.”⁴⁹ Doern and Tomlin, in their account of the CUSFTA negotiations, characterized Reisman’s reputation as “loquacious, blunt to the point of rudeness, and often profane.”⁵⁰ Among SAGIT participants interviewed for this study, one referred to him as “one tough egg” while another described him as “extremely difficult” and characterized his interactions with the negotiator as “openly conflictual”.⁵¹

⁴⁷ Interview 1309.

⁴⁸ Interviews 1307, 1309, 1334, and 1338.

⁴⁹ Ritchie, *Wrestling With the Elephant*, 222.

⁵⁰ G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991), 7.

⁵¹ Interviews 1334 and 1338, respectively.

One SAGIT participant also remembered Derek Burney as a strong negotiator and another recounted an incident of Gordon Ritchie “receiving a banging” from the artistic members of the SAGIT.⁵² This account accords well with Ritchie’s own description of the group as throwing a “succession of tantrums.”⁵³ One SAGIT member described officials in the Department of External Affairs as “anti-Canadian culture” and recounted examples of departmental officials complaining about Canada’s small talent pool, “embarrassing” quality of films and records, and generally espousing strong views against Canadian culture.⁵⁴ This participant characterized the department’s response to matters pertaining to Canadian culture as “half-hearted” and “indifferent” and in some instances, bordering on “incomprehension.”

In sum, whereas SAGIT participants stated they were impressed with the capacity of members of the group to collaborate to reach consensus, they expressed different views with respect to the SAGIT’s relations with the government. None of the members stated that the SAGIT and government worked together collaboratively. As discussed below, trade negotiators shared participants’ assessment of sector-governmental relations, perceiving the dynamics between the consultative group and government officials as conflict-laden.

⁵² Interviews 1307 and 1309.

⁵³ Ritchie, *Wrestling with the Elephant*, 216.

⁵⁴ Interview 1307.

Assessment of the Working Hypotheses

As discussed above, active engagement, intrasectoral collaboration and sector-governmental conflict characterized the level and nature of participant engagement in the SAGIT process during the CUSFTA period. The following page reproduces Figure 3 from Chapter 2 and identifies the consultation outcomes at CUSFTA and the associated hypotheses (using the shaded boxes and the shaded letters in the body of the diagram, respectively). As the figure shows, the dissertation proposed that these outcomes would obtain where state behaviour is inimical to participants interests (I), where there are few alternative channels (F), and in the presence of reframing processes aligning participant interests (A). The sections below describe the extent to which the findings at CUSFTA support the dissertation's hypotheses. The analysis reveals that the outcomes of participation at CUSFTA lend strong bear out the study's theoretical assertions.

Role of the State

State behaviour played a key role in participant engagement in the CUSFTA SAGIT. Government decisions regarding membership and bureaucratic resources accorded to the group, in addition to participants' perceptions of the level of policy influence of the SAGIT affected both the level and nature of participant engagement in the consultation, with membership selection and perceptions of policy influence playing a central role in the participatory dynamics of the group.

Figure 7: Consultation Outcomes at CUSFTA

Membership. Interviews with SAGIT members reveal that membership selection played a crucial role in influencing the extent and nature of participant involvement in the consultation. For those on the SAGIT, the group represented a “microcosm” of the cultural sector. They felt satisfied with the government’s choice of members,⁵⁵ noting that the group represented both artistic and industrial interests, as well as the diversity of subsectors in both the production and distribution sides of the industry. When asked why they felt the government appointed them to the SAGIT, most members noted that they “had” to be there because of the cultural group or industry subsector that they represented,⁵⁶ another believed the government appointed him because of his involvement in a government task force examining the cultural sector,⁵⁷ while still another felt that the government appointed him because he was an artist representing a particular region of the country.⁵⁸ One member did not know what accounted for his appointment, noting he did not bear a direct business connection to the cultural sector.⁵⁹

Interestingly, two study participants (one a public official at CUSFTA and the other a SAGIT member post-NAFTA),⁶⁰ espoused very different views of the representativeness of the SAGIT at the time of the CUSFTA negotiations (and at the time

⁵⁵ The process of membership selection for the cultural SAGIT was based on consultations between the SAGIT chair and the government. According to the SAGIT chair, the government accepted all of the names he proposed, save one member that the government added to the list for partisan political reasons.

⁵⁶ Interviews 1307, 1309, 1325 and 1334. One of these individuals also believed that his partisan connections also contributed to their appointment to the group.

⁵⁷ Interview 1338.

⁵⁸ Interview 1328.

⁵⁹ Interview 1309.

⁶⁰ Interviews 1311 and 1322.

of the NAFTA negotiations, as the following chapter discusses). These individuals described the government's choice of CUSFTA SAGIT members as "strange". In comparison to the other SAGITs, composed largely of CEOs of major corporations, these individuals believed that membership selection for the SAGIT on culture was far more political than any of the others, containing high profile political figures predominantly "from the left side of the political spectrum," and "ideologically opposed to free trade." They attributed this slate of appointments to the then Minister of Communications, Marcel Masse, who they described as a nationalist with "a bit of a Messiah complex," who they believed influenced the membership in this direction.

This membership slate accounted to a great extent for the intrasectoral conflict the SAGIT displayed (the subsequent section on reframing processes examines the factors accounting for the collaboration that took place between the SAGIT members despite the diversity of the group discussed here). As described in the previous section, much of the conflict between group members originated from the attitudinal differences between the creative and industrial representatives of the group. The most vocal of those on the creative side sought debate at a philosophical level. They stood against the very concept of free trade, believing it would fundamentally alter Canadian identity and expression. Concerns over the extent of American presence in Canada – the "cultural occupation" of Canada by the United States, for some – dominated debate in this realm.

For many of the business interests, meanwhile, attention focused on more specific questions relating to business and trade, especially the extent of protection the free trade agreement would accord to the cultural industries. While one participant noted that the more specific concerns of industry tended to carry the day in debates between the artistic and industrial wings of the SAGIT, this individual saw value in the input of the creative interests, particularly because the CUSFTA represented the first time trade liberalization confronted cultural matters so directly.⁶¹

Resources accorded to the group. SAGIT members expressed satisfaction with the level of bureaucratic and financial resources accorded to the group. As Chapter 3 discussed, the government did not remunerate SAGIT members, reimbursing them only for travel expenses. This arrangement met with the satisfaction of the group. In keeping with Moroz' findings at the time of the CUSFTA, participants generally felt satisfied with the level of support, information, and briefings the department provided the SAGIT. One participant noted that the department was probably "pretty stretched" with providing secretariat support to all of the SAGITs.⁶²

Two SAGIT members felt departmental bureaucrats organized the group "to death," and remarked that large numbers of bureaucrats attended meetings of the Arts and Cultural Industries SAGIT.⁶³ Of these two participants, one interpreted the presence of the various public officials as the government's attempt to "drive the agenda" and

⁶¹ Interview 1309.

⁶² Interview 1307.

perceived efforts by government officials to facilitate and guide group discussions as attempts to compromise the independence of the group. The other SAGIT member indicated they he had previously worked in government, and interpreted the presence of numerous bureaucrats as a reflection of the routine operations of government, specifically the need for various units within External Affairs to have representation at the SAGIT meetings. This individual did not respond negatively to bureaucrats' attempts to keep the meetings "on track," remarking that the government established the groups to seek sectoral input on specific issues, rather than to advise or "wax on" about any topic of the group's choosing.

Policy Influence. Although all SAGIT members interviewed for this study felt the government struck a good balance between listening to the group versus debriefing members on developments in the negotiating process, they expressed differing opinions as to the extent of the group's policy influence. Most doubted from the outset that the consultation would bear a significant influence on policy.⁶⁴ One participant stated, "We weren't naïve. We knew that the government was consulting so that they could say they had consulted"⁶⁵ and two pointed to the cultural exemption -- particularly the exemption's retaliatory clause (Article 2005(2), discussed further on in the chapter) -- as evidence that the government had not acted on the group's advice.⁶⁶ One participant

⁶³ Interviews 1307 and 1334.

⁶⁴ Interviews 1307, 1325, 1328, and 1338.

⁶⁵ Interview 1328.

⁶⁶ Interviews 1307 and 1338.

remembered “taking a drubbing” from members of the cultural community because “what we got was not what we wanted.”⁶⁷

Others, meanwhile, believed the government listened to what the group said, stating that they were “very impressed that the government staked out such a bold stance” on culture, singling out the sector for exemption.⁶⁸ Only one SAGIT member expressed uncertainty as to the extent of the group’s policy influence, but spoke approvingly of the process, remarking that the government listened to the views of the group and “didn’t make you feel put upon that the fix was in.”⁶⁹

The interviews conducted with SAGIT members indicated that participants’ perceptions of the relative policy influence of the group significantly influenced the nature of the relations between the group and the government. One SAGIT member anticipated conflictual relations with officials from the Department of External Affairs because, as previously mentioned, this individual perceived that departmental officials not only lacked concern for cultural matters but also bore negative attitudes towards Canadian culture. This member stated that the department was “never strong on culture,” that it did not recruit or train staff to understand cultural matters, and noted that the department allocated only minimal human and financial resources to culture.⁷⁰ But beyond the *perceived potential* for conflict, as previously discussed, SAGIT members

⁶⁷ Interview 1307.

⁶⁸ Interviews 1308 and 1334.

⁶⁹ Interview 1309.

⁷⁰ Interview 1307.

remarked on the difficulty of trying to convince Canada's senior trade negotiators to keep culture out of the negotiations and they were skeptical that the government listened to or heard these concerns.

From the government side, a CUSFTA trade negotiator interviewed for this study described the Arts and Cultural Industries SAGIT as a "strange one" in comparison to the other sectoral groups.⁷¹ This individual remarked on the willingness of CEOs in the other SAGITs to "roll up their sleeves" and work with the TNO to identify provisions for the agreement "they could live with." Officials from the TNO would meet with members of the other SAGITs to inform them of Canada's "wiggle room" in their sector for such issues as tariff reduction. Members would then collaborate to ascertain provisions that their sector could manage (for instance, levels of and timetables for tariff reductions).

In contrast, in the view of this official, the Arts and Cultural Industries SAGIT adopted an untenable position. The group objected to increasing market access for the United States to Canada, but expected that the Canadian cultural sector could continue to enjoy its current level of market access to the United States. In his published account of his interactions with the cultural SAGIT, Gordon Ritchie commented with respect to the group's position, "It certainly made my job as negotiator more difficult. ... They really could not count on having their cake and eating it, too. If we somehow stonewalled the Americans on their demand for access to Canada, we had to expect a rough ride in their

⁷¹ Interview 1322.

market.”⁷² As the section on alternative channels below describes, some of the larger cultural business interests in Canada -- including two of the CUSFTA SAGIT members -- created an alternative channel to bypass this blockage in the group’s relations with TNO officials.

Trade negotiators, other (non-state) cultural interests, and subsequent members of the SAGIT post-NAFTA, stated that the CUSFTA SAGIT possessed negligible policy influence.⁷³ They described it as “ineffective,” as a bureaucratic exercise, and stated that the “real consultations” took place elsewhere. One trade negotiator drew a distinction between the Arts and Cultural Industries SAGIT and the other SAGITs, asserting that in the case of the former, the government’s purpose for consulting was “to be seen to be consulting,” while in the case of the latter, the consultations were “real,” with CEOs actively influencing the sectoral details of the agreement.⁷⁴

In the cultural sector, these individuals maintained that the government used the SAGIT strategically to dilute and counter the opposition of members of the cultural sector opposed to the CUSFTA. The government appointed a group of “highly articulate and influential” members to the SAGIT – individuals who would “come out against the agreement” – in order to make it more difficult for cultural interests to “crap all over” the

⁷² Ritchie, *Wrestling with the Elephant*, 216.

⁷³ Interviews 1311, 1312, 1318 and 1322. Indeed, one of the negotiators at CUSFTA characterized the information flow between members of Canada’s negotiating team and SAGIT members as one-way, with trade negotiators attending SAGIT meetings with the sole purpose of briefing participants as opposed to seeking their input (Interview 1318).

⁷⁴ Interview 1322.

accord.⁷⁵ In other words, the government believed that it would be more difficult for cultural interests to publicly criticize the agreement if they had participated in a consultation process than if they had not.

The distinctiveness of the Arts and Cultural Industries SAGIT relative to the other sectoral groups underscores the capacity of the state to exercise considerable control over a deliberative consultation channel. The government apparently sought to co-opt a number of influential artistic members of the cultural milieu by appointing them to the group. This materially affected the nature of intrasectoral engagement in the group by generating conflict between the industrial and creative members of the SAGIT. It also illustrated that nonstate actors do not necessarily remain complacent in the face of "strategic governance." As explained in the section below, a number of corporate SAGIT members created an alternative channel to communicate with the government because they felt that the group possessed minimal policy influence.

Role of Alternative Channels

SAGIT members noted a range of alternative channels through which they could represent their interests regarding the cultural sector and trade. All of the channels participants identified represented domestic-public channels. That is, they were alternate forums for interest representation at the domestic level in the public sector. Of these, the Canadian Culture/Communications Industries Committee, a private sector interest group established during the free trade negotiations, arguably played the most pivotal role.

⁷⁵ Ibid.

The other channels participants mentioned consisted of elected and appointed government officials. Participants noted that beyond their involvement in the SAGIT, they could make representations to other officials in the Department of External Affairs, to the External Affairs minister, to the department and/or Minister of Communications, as well as directly to trade negotiators.⁷⁶ Two SAGIT members noted that they had personal relationships with the Minister of Communications and/or with Canada's trade negotiators for the CUSFTA, so were able to voice their views directly to these individuals.⁷⁷

One member indicated that prior to the establishment of the SAGITs, he participated in the meeting with External Affairs Minister Joe Clark in the fall of 1985.⁷⁸ As mentioned in the first section of this chapter, the government convened this meeting of key ministers with a number of Canada's cultural interests following the September 1985 announcement in Parliament that Canada and the United States had agreed to negotiate a comprehensive bilateral free trade agreement. Similarly, this participant stated that he pressed one of Canada's trade negotiators for the CUSFTA to get cultural issues "on the radar screen" and continued to represent his views to this individual throughout the negotiations, even following the creation of the SAGIT.

⁷⁶ Interviews 1307, 1308, 1334, 1325, and 1338.

⁷⁷ Interviews 1307 and 1308.

⁷⁸ Interview 1307.

Three SAGIT members remarked on the different factions within Cabinet and the bureaucracy with respect to the cultural industries.⁷⁹ On one side, was Prime Minister Brian Mulroney, who vitally wanted a free trade agreement with the United States and did not want anything to upset the Canada-US relationship. Mulroney was supported by Simon Reisman, head of the TNO (that reported directly to the PM), who “would do whatever it took to make it happen.” On the other side, was Minister of Communications Marcel Masse, a “real nationalist,” who felt principles of culture should take precedence over Canada’s relationship with the US.⁸⁰ While the centre of power for the CUSFTA negotiations resided with the PM and the TNO, Minister Masse, who SAGIT members described as “a bit of a loose cannon,” was “fomenting things,” by, for example, influencing the membership of the Arts and Cultural Industries SAGIT in the direction of high profile political appointments. As the following chapters discuss, a number of SAGIT members post-CUSFTA also remarked on the different factions at the Ministerial and bureaucratic levels that characterize the cultural industries sector.

Ironically, it is perhaps as a result of Minister Masse’s demands for the appointment of influential members of the cultural community to the SAGIT that the more substantive consultations with the cultural sector took place outside the SAGIT process. Corporate members of the SAGIT did not remain complacent in response to the

⁷⁹ Interviews 1307, 1308 and 1325.

⁸⁰ One SAGIT member felt that this division in Cabinet accounted for the relative ambiguity of the government’s position on the cultural industries throughout the negotiations. He noted that the government needed to “find a saw-off that would keep cultural nationalists quiet at least for a little while.” (Interview 1307). Only one SAGIT

government's decisions respecting membership of the group. Along with other private sector interests, they created an alternative channel, the Canadian Culture/Communications Industries Committee, to communicate with the government and advocate the interests of the major cultural industries in Canada. According to one of its members, the group wanted to show Simon Reisman that it was not only artists that were troubled about the place of culture in the negotiations, but large industries were also concerned with the issue.⁸¹ Established on the initiative of Pierre Juneau, then president of the Canadian Broadcasting Corporation, the CCIC included among its members two of the CUSFTA SAGIT members, as well as a number of individuals who would come to serve as SAGIT members in the years to come.

Juneau, working with a former professional colleague, contacted the heads of the major Canadian cultural industries in Canada, including Maclean Hunter, Baton Broadcasting, the Southam Newspaper Group, Télémédia, and Astral Communications. One of the former members of the CCIC noted that the heads of these organizations represented not only major Canadian business interests, but also very strong personalities, who could work effectively to lobby the government.⁸² Of the half a dozen or so main organizations comprising the CCIC, three (Maclean Hunter, Baton Broadcasting and Southam) were also represented on the SAGIT, and the chief executives of two of these three (Maclean Hunter and Baton Broadcasting) held dual membership in the SAGIT and

member described Prime Minister Brian Mulroney as supportive of cultural issues in trade (Interview 1338)

⁸¹ Interview 1312.

⁸² Ibid.

the CCIC.⁸³ The CCIC also included in its membership the heads of the major Canadian television, broadcasting, film production, and sound recording companies.

One of the CCIC's originators (who was not a SAGIT member) indicated that his interest in establishing the group derived not from perceived weaknesses of the SAGIT process, but rather from the over-riding concern that the free trade negotiations would submit the cultural industries sector to the laws of international trade.⁸⁴ Another individual involved with the CCIC described the Arts and Cultural Industries SAGIT as "quite ineffective" because the government selected members from the creative side of the cultural sector, notably nationalist writers and creators "from the left side of the political spectrum."⁸⁵ Perceiving that artists' concerns over cultural sovereignty did not generate useful advice to the government in trade negotiations, some CCIC participants viewed the Committee as essential to bringing the views of industry to the government. Indeed, Gordon Ritchie, in his discussions of the CCIC, remarked on the connection between the Arts and Cultural Industries SAGIT and the CCIC, "The [SAGIT] advisory group was a curious amalgam of artists and business interests. The latter tended to be overwhelmed by the rhetorical outbursts of the performing talents. The business interests

⁸³ As the following chapter discusses, this pattern of overlap between membership in the SAGIT and the CCIC continued and expanded in the NAFTA period, with the Chair of the SAGIT during NAFTA also taking an active role in the CCIC.

⁸⁴ This individual perceived the SAGIT as too formal, official and bureaucratic, and preferred a more personal, informal setting in which to approach the government.

⁸⁵ Interview 1311.

had to find other ways to get their message across.”⁸⁶ The CCIC represented this alternative channel.

The group met approximately three to four times throughout the CUSFTA negotiations, often in Toronto in the offices of Maclean Hunter. In one of the first meetings of the group, the members decided to undertake some research to support their position that the cultural industries should not be subject to the rules of the international trading regime. Each member agreed to contribute \$10,000 for a total of \$100,000 to hire consultants to develop a report. Gordon Ritchie describes the resulting document, *Free Trade and Cultural Identity: Will We Have Access to Our Own Markets*, as a “well-reasoned brief” that mounted a “devastating account” of American penetration of the Canadian cultural industries marketplace.⁸⁷

The group invited Simon Reisman and Gordon Ritchie to dine with them at the Rideau Club in Ottawa, located in the tower adjoining the TNO offices. At this dinner, a small number of key members of the group (including the two SAGIT members) presented the two trade negotiators with their report, and personally delivered their message, which their report summed up as follows:

“In approaching the Canada-U.S. trade negotiations there are no doubt many in Canadian business, as well as our negotiating team, who seek access to the large and potentially lucrative U.S. market... our goal is different. We seek continued competitive access to our own market. This is a critical requirement if we want to

⁸⁶ Ritchie, *Wrestling with the Elephant*, 216-217.

⁸⁷ Ibid, 217.

see the survival of cultural content produced by and for Canadians. Canadian cultural content will simply not survive if our goods and services are required to be substantially repackaged to meet the tastes of a North American market, 90% of which does not share Canada's interest in things Canadian."⁸⁸

In keeping with the private sector interests on the SAGIT, the Committee's concerns revolved less around access to the American marketplace and more around protection for the Canadian cultural industries. The primary difference was that the group was not opposed to free trade on ideological grounds as were some of the members of the SAGIT. Rather, their concerns pertained to Canadian cultural content and to the place of the cultural industries in the agreement. Ritchie summarized the views of the group, "As businesspeople, this group believed that a free trade agreement with the United States could be in the overall economic interests of Canada. They were convinced, however, that if these free trade rules were applied to their industries, the result would be to strip away the last vestiges of Canadian cultural expression."⁸⁹

From the perspective of one of Canada's trade negotiators at CUSFTA, the difference between the SAGIT and the CCIC was one of form versus substance. The SAGIT represented "form" as a means for the government to "be seen to be consulting," while the substance of consultations, the "real" consultations, took place with the CCIC. This individual described the CCIC as sensitive to international opportunities and not

⁸⁸ Canadian Culture/Communications Industries Committee, *Free Trade and Cultural Identity: Will We Have Access to Our Own Markets?* (unpublished document, 1986), 15. As quoted in Paul Audley, "Cultural Industries Policy: Objectives, Formulation, and Evaluation." *Canadian Journal of Communications* 19, 3-4 (1994), 19 (electronic version). Available on-line at http://www.cjc-online.ca/title.php3?page=4&journal_id=18

opposed to free trade on ideological grounds. Moreover, because it accounted for millions of dollars of cultural industries revenue and comprised a significant number of firms in the industry, the CCIC “represented the industry much more than the SAGIT did.”⁹⁰ As discussed in the following chapter, interviews conducted for this study suggest that the government continued to use the SAGIT strategically as a means of appearing publicly to consult with affected cultural interests, meanwhile undertaking the “real consultations” with the CCIC.

The CCIC provides an excellent illustration of the potential endogeneity of alternative channels and the active response of members of the cultural industries policy network to government attempts to structure its relations with sectoral actors at the domestic table. A number of members of the SAGIT consultation, perceiving that the process might not enable them to wield a desirable level of policy influence, reacted swiftly and strongly by creating the Canadian Culture/Communications Industries Committee as an alternative channel to undertake second table deliberations with the government. In the words of a member of the SAGIT who did not formally sit on the CCIC but met with the group on several occasions, “The members of the CCIC were a bit wary -- don’t forget that the SAGIT was a government entity. ... We couldn’t know ahead of time how much [policy] latitude the SAGIT would have so many [SAGIT members] sat on both.”⁹¹

⁸⁹ Ritchie, *Wrestling with the Elephant*, 217.

⁹⁰ Interview 1322.

A former CCIC member and SAGIT member echoed this view: "We all started off a bit wary [of the consultation process]. We were nervous. Were we being coopted [by the government] to be silenced?"⁹² Cultural industries representatives chose not to exit the SAGIT process entirely, but rather, participated in both channels of interest representation. According to one member of the CCIC who also sat on the SAGIT, "We [the CCIC] didn't feel we were competing with the SAGIT. We felt we needed a little extra support -- this was a battle for our survival." This individual described the potential policy influence of the SAGIT as "minimal" and elaborated as follows: "If you are the government, are you going to listen to a small publisher in Vancouver or the president of General Motors?"⁹³

Role of Reframing Processes

Interviews with SAGIT participants indicated that while trade disputes were beginning to affect the cultural industries at the time of the free trade negotiations, these disputes exerted only minimal influence on the sector in this consultation period. While bilateral frictions over Canadian cultural industries policies did take place in the pre-CUSFTA period (e.g., disputes over the mechanics of forced divestiture under the Baie Comeau policy), the series of formal trade disputes characterizing the mid- to late 1990s was yet to come.

⁹¹ Interview 1338.

⁹² Interview 1332.

⁹³ Interview 1334.

Above all else, the process of trade liberalization itself represented the international development shaping participant interests. Interviews with SAGIT participants revealed that trade liberalization represented a common threat to the members of the SAGIT. As previously noted, the CUSFTA negotiations marked the first occasion at which cultural industries policies could become subject to the disciplines of the international trading regime. While as noted above, many of the creative interests on the group opposed the process of trade liberalization in and of itself, they shared with the business members a common interest in -- at a minimum -- exempting the cultural industries from the agreement.

SAGIT members indicated that this shared threat assisted the group to develop a unanimous position against negotiating in the cultural sector. According to one SAGIT participant, "We were living a historic moment. If we did nothing, we would have failed history. It was imperative that we speak out."⁹⁴ Active participation became essential as a means of moving cultural issues onto the "radar screen" of the Canadian public and the government. In the words of another SAGIT member, "Our objective was to draw a line around cultural issues. We knew the Jack Valentis of the world would press for greater access to the Canadian marketplace and try to cement their position."⁹⁵ Another SAGIT member likened the CUSFTA period as a "battle for survival" and said of efforts on the

⁹⁴ Interview 1328.

⁹⁵ Interview 1307.

part of those in the cultural industries to keep the sector out of the negotiations “we literally spent 90 per cent of our time on it.”⁹⁶

NEGOTIATION OUTCOMES

It appears the Canadian government negotiated a doubled-edged provision to satisfy the contradictory interests at its domestic and bilateral tables. Article 2005(1) is the domestic edge of the cultural industries provision. Clearly directed to domestic-level concerns, it exempts the cultural industries from the provisions of the CUSFTA. The agreement defines cultural industries as enterprises in the following industry sectors: print (books, magazines, periodicals, and newspapers); film, audio and video recording; music; and radio, television, cable, and satellite broadcasting.⁹⁷ The exemption, however, is not absolute.

First, there are four exceptions to the cultural exemption in Articles 401, 1607 paragraph 4, 2006 and 2007. Article 401 removes tariffs on cultural goods such as pre-recorded disks and cassettes. Article 1607 paragraph 4 establishes the requirement for the government to pay fair market value in cases of forced divestiture of a company determined to be under illegal control, i.e., non-compliant with foreign ownership restrictions. Article 2006, for its part, establishes program retransmission rights requiring Canadian firms to pay US broadcasters for retransmitting their programs. Finally, Article 2007 eliminates the requirement to print or typeset periodicals and newspapers in Canada

⁹⁶ Interview 1334.

in order for the expenses of advertising placed in Canadian magazines and newspapers to be eligible for tax deduction. These exceptions addressed existing trade irritants for the Americans, particularly in the realms of forced divestiture, print in Canada requirements, and retransmission rights.

Three of these four exceptions reduced Canada's capacity to accord preferential treatment to its domestic producers. Article 401 eliminated tariffs on a range of American cultural goods entering Canada, leveling the competitive playing field between American and Canadian producers of similar cultural goods. Article 2006 closed the window on the Canadian government's initiative to fund the production of Canadian content by permitting Canadian broadcasters to pick up and retransmit American programs without royalty payments provided that a percentage of the resulting advertising revenues were allocated to Canadian content development.⁹⁸ Article 2007 extended advertising deduction eligibility to Canadian-controlled periodicals and newspapers printed or typeset outside of Canada, potentially reducing the pool of advertising revenues for smaller Canadian magazines and newspapers produced entirely in Canada.⁹⁹ The other exception, fair market value in cases of forced divestiture, did not constrain the Canadian government's ability to pursue its cultural policy objectives. Canada's foreign ownership restrictions were left untouched. The provision merely met a

⁹⁷ For the range of business activities (i.e., production, distribution, sale, exhibition, etc.) covered by the definition in each of these sectors, see CUSFTA Article 2012.

⁹⁸ Roy Davidson, "Intellectual Property," in Duncan Cameron and Mel Watkins, eds., *Canada Under Free Trade* (Toronto: Lorimer, 1993), 218.

basic minimal requirement of international law on expropriations, that foreign firms must receive fair compensation in cases of forced divestiture.

Second, paragraph 2 of Article 2005, establishes a retaliation right for cultural industries policy measures that would be inconsistent with the CUSFTA in the absence of the exemption. This is the bilateral edge of the provision. It states, "Notwithstanding any other provision of this Agreement, a Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1."¹⁰⁰ This second paragraph arguably contradicts the exemption provided in the first by giving the American government the right to retaliate if Canada maintains or adopts measures in the cultural industries sector that would be inconsistent with the CUSFTA but for the exemption. Johnson and Schacter maintain that Article 2005(2) enables the Americans to take unilateral retaliatory measures, without having to notify or consult with Canada and bypassing entirely the dispute settlement mechanism in CUSFTA 1806.¹⁰¹ Further, retaliatory measures of equivalent commercial effect are not restricted to the cultural industries.¹⁰² This means that as long as the commercial effect of the retaliatory measures is equivalent to the damage done by the inconsistent cultural measure(s), retaliation can be targeted to any Canadian industry.

⁹⁹ Rick Salutin, "Culture and the Deal: Another Broken Promise," in Marc Gold and David Leyton-Brown, eds., *Trade-Offs on Free Trade: The Canada-U.S. Free Trade Agreement* (Toronto: Carswell, 1988), 368.

¹⁰⁰ The Canada-U.S. Free Trade Agreement, Article 2005(2).

¹⁰¹ Jon R. Johnson and Joel S. Schacter, *The Free Trade Agreement: A Comprehensive Guide* (Aurora: Canada Law Book Inc., 1988), 145.

The inclusion of a right of retaliation in the CUSFTA cultural industries exemption (CIE) differs from the exemptions Canada negotiated in its free trade agreements with Israel and Chile. Bernier argues that these latter exemptions are examples of true cultural exemptions because they do not incorporate a right of retaliation.¹⁰³ The retaliation right in Article 2005(2) was a clause of necessity to respond to the demands of the Americans.¹⁰⁴ It is the bilateral edge of the provision and many argue that it overpowers the exemption in Article 2005(1). Because the CIE incorporates a right of retaliation, Bernier argues that its effect, paradoxically, is to render Canada's cultural industries subject to *all* of the provisions of CUSFTA: "all it says is that a party can, *if it is willing to pay the price*, uphold provisions on the cultural industries that are inconsistent with its commitments."¹⁰⁵

Moreover, because the right of retaliation is not limited to the cultural industries, by implication, Lester maintains that it unleashes a powerful dynamic in cultural industries policy development, challenging the approval of proposed cultural industries initiatives at the Cabinet table. "This seemingly innocuous clause thus has the chilling effect of potentially setting all the ministers of government against new cultural policies,

¹⁰² Ibid, 146.

¹⁰³ Ivan Bernier, "Preserving and Promoting Cultural Diversity: Necessity and Prospects for Action," Working Document prepared for the First International Meeting of Professional Associations in the Cultural Milieu (September 10-13, 2001, Montreal, Quebec, Conference presented by the Coalition for Cultural Diversity), 6-7.

¹⁰⁴ Ritchie, *Wrestling With the Elephant*, 223.

¹⁰⁵ Ivan Bernier, "Preserving and Promoting Cultural Diversity," 6, emphasis added.

because any new cultural policy could result in U.S. retaliation against industries under their jurisdiction."¹⁰⁶

Indeed, Bernier contends that the exemption has had a restraining effect on Canada, "dissuading the country from resorting to legislative or regulatory measures that are inconsistent with the FTA or NAFTA."¹⁰⁷ Moreover, Canada has *never* invoked the cultural exemption under either the CUSFTA or the NAFTA.¹⁰⁸ In fact, some argue Canada has moved in the opposite direction, eliminating postal rates favouring Canadian magazines, abandoning the "print in Canada" requirement for income tax deductions for advertising in magazines or newspapers, discontinuing the requirement that the sale of book publishing companies be offered first to Canadian buyers, abandoning proposed legislation to increase film distribution by Canadian film companies, and reducing the budget of the Canadian Broadcasting Corporation.¹⁰⁹ As Davidson states, "It is not surprising that an 'exemption' that is so constrained has little visible effect."¹¹⁰

¹⁰⁶ Malcolm Lester, "Free Trade and Canadian Book Publishing," in Gold and Leyton-Brown, *Trade-Offs on Free Trade*, 364.

¹⁰⁷ Bernier, "Preserving and Promoting Cultural Diversity," 6-7.

¹⁰⁸ Dymond and Hart, "Abundant Paradox," 7.

¹⁰⁹ Davidson, "Intellectual Property," 216.

¹¹⁰ Ibid, 216. Moreover, Davidson maintains that a "pliant" Canadian government agreed to "off-the-table" or "under-the-table" intellectual property arrangements affecting the cultural industries outside of the CUSFTA deal (217-219). He argues that Canada made radical changes to its copyright law under US pressure. The Canadian Copyright Act of 1988, passed just months prior to the signing of the CUSFTA, abolished Canada's requirements for compulsory licensing of copyright for the making of sound recordings, a development that, in Davidson's estimation, favours the American sound recording industry.

But despite these potential limitations of the CIE, in the CUSFTA ratification period, top Canadian politicians and government officials portrayed the exemption as complete protection for Canada's cultural industries. Prime Minister Brian Mulroney and Communications Minister Flora MacDonald, in media commentary and public appearances, maintained that the cultural industries were exempt from the CUSFTA.¹¹¹ Gerry Shannon, the Deputy Minister for International Trade and Undersecretary of State for External Affairs, did likewise.¹¹² Further, an informational brochure published by the Department of External Affairs following the signing of the CUSFTA stated, "The new Agreement [CUSFTA] does nothing to prevent present and future measures to protect and promote Canadian culture and the industries that support it."¹¹³

In essence, the government portrayed the CIE as a *true* cultural exemption clause, although its scope and coverage were not complete. The following quote from Carr summarizes the arguments of critics of the CIE, "...any Canadian loyalty to the [Canada-US Free Trade] agreement is based on a misperception of what its cultural provisions contain. In particular, the blanket assertion that culture is exempt from FTA is simply untrue. Not only does the treaty explicitly mandate several changes to Canadian cultural policies and adjust tariffs on numerous cultural products, it is also ambiguous about the

¹¹¹ See, for example, "PM Sits Down with Hecklers for Impromptu Trade Debate," *The Toronto Star*, November 3, 1988, A21 and "Minister Insists Culture is Safe," *Calgary Herald*, January 25, 1988, A3.

¹¹² "Exporters Offer Sympathetic Ear on Free Trade Deal," *The Toronto Star*, October 4, 1988, G7.

¹¹³ External Affairs Canada, "Canada's New Free Trade Agreement – Culture" (as quoted in Johnson and Schacter, *The Free Trade Agreement*, 139).

range of cultural activities it covers and fails to shield application of the exemption from retaliatory actions that are justified by other provisions of the agreement.”¹¹⁴

And yet others argue that the CIE *does* protect Canada’s measures in the cultural sector. Peter Grant, a legal expert in international trade law in communications and broadcasting notes that because the CUSFTA provisions do not apply to services, the CIE does shield Canada’s measures for cultural services like broadcasting.¹¹⁵ Similarly, Ritchie, in his account of CUSFTA outcomes on the cultural industries viewed the exemption as a negotiating success, stating:

“Despite the most forceful American bullying, I believe we not only held the line but even advanced it a little with what came to be known as the “cultural exemption.” ... We first insisted on defining these industries as “cultural” and made the definition very broad indeed. ... Then we exempted these industries from the rules of the agreement. The Americans insisted, fairly enough, on maintaining their right to retaliate against us if we acted against their interest. But we insisted on limiting the scope of that retaliation to what we called “equivalent commercial effect.” ... Finally, we insisted on impartial arbitration to enforce these rules.”¹¹⁶

Ritchie’s assessment of the CIE differs from the analyses of the CIE’s critics in two important respects. First, his appraisal of the exemption points out that the United States already possessed a right of retaliation prior to the CUSFTA. Indeed, one of the negotiating successes from his point of view was to limit the scope of retaliation to equivalent commercial effect. This runs counter to some of the arguments described

¹¹⁴ Graham Carr, “Culture,” in Cameron and Watkins, *Canada Under Free Trade*, 204.

¹¹⁵ As stated by Peter Grant in the discussion session of the Session on Trade and Domestic Policy at the *Annual Conference of the Canadian Political Science Association*, University of Toronto, Toronto, May 30, 2002.

above, which appear to assume that the United States did not possess a right of retaliation pre-CUSFTA. Moreover, many of the previously-noted analyses, in contrast to Ritchie, hold that the existence of *any* right of retaliation in the provision negates the exemption itself. They further criticize the CIE right of retaliation because it is not limited to the cultural industries, i.e., the United States can retaliate against any industry sector. Ritchie's analysis is silent on this point.

Second, Ritchie notes that the rules are to be enforced by impartial arbitration. This directly contradicts Johnson and Schacter's appraisal of Article 2005(2) as enabling the United States to take unilateral retaliatory measures, without having to notify or consult Canada and bypassing entirely CUSFTA's dispute settlement mechanism.

While it is not the purpose of this dissertation to assess the extent to which the cultural industries exemption does or does not shield the cultural industries from the provisions of the CUSFTA, the foregoing discussion highlights the ambiguity surrounding the extent of protection the CIE confers to the cultural industries.

In the wake of the CUSTA negotiations, many cultural industry sectors interpreted the CIE as offering little or no protection to the cultural industries and adamantly opposed the agreement. In a strongly worded editorial entitled, "Obituary for a Culture," the film industry solidly criticized the CIE following the signing of the CUSFTA. Arguing that the exemption does not protect cultural industries because of the

¹¹⁶ Ritchie, *Wrestling With the Elephant*, 223.

retaliatory clause, the editorial went on to suggest that only policy measures for individual artists would be permitted under the CUSFTA – not policies to support cultural businesses: “Telefilm can become a glorified National Endowment for the Humanities, CBC can become Canada’s PBS, because that is a notion of culture which Americans and, it seems, many of Mulroney’s cabinet can accept. But popular forms of culture – TV, film and video produced by companies rather than individual artists – are seen as business, the entertainment business, and thus exempt from protection.”¹¹⁷

The publishing sector came out equally forcefully against the agreement. The Association of Canadian Publishers stated that the agreement should be rejected because the cultural industries exemption was not strong enough to protect against US retaliation if Canada introduces new cultural policies.¹¹⁸ The Association also accused Prime Minister Brian Mulroney and Communications Minister Flora MacDonald of failing to live up to their promise of exempting cultural industries from the agreement.¹¹⁹

This opposition to the agreement was not isolated to the film and publishing sectors. Over a dozen cultural organizations representing creative and business interests in the film and television production, sound recording, and publishing sectors formed the Cultural Industries Alliance following the signing of the bilateral accord. The Alliance

¹¹⁷ Editorial, “Obituary for a Culture,” *Cinema Canada*, Volume 157 (November 1988), 4.

¹¹⁸ Heather Bird, “Trade Pact Puts Culture in Danger Publishers Warn,” *Toronto Star*, July 26, 1988, A9.

¹¹⁹ Jamie Portman, “Trade Deal has Culture Industry Seeing Red,” *Vancouver Sun*, July 29, 1988, F1.

accused the federal government of reneging on its promise to protect Canada's cultural sovereignty, and of signing a deal that would undermine existing cultural policies and block future government initiatives in the cultural sector.¹²⁰ The Alliance's spokesperson stated that the CUSFTA "is very dangerous for the cultural industries. The so-called 'notwithstanding' clause allows the Americans to retaliate to something they don't like, such as strengthening our Canadian content regulations. Under the agreement, the Americans would be legally entitled to retaliate."¹²¹

Many participants interviewed for this study, the majority of whom possess considerable expertise in the cultural industries in trade (and some of whom are Canada's foremost experts in the field), expressed widely divergent opinions of the cultural industries exemption. For some, it represented a victory for the cultural industries, for others, a stop-gap measure that ought never to have been carried over into NAFTA, and for others still, a dismal failure from the outset. As the coming chapters discuss, this ambiguity surrounding the exemption continued on into the NAFTA period and beyond, and remains a prominent feature of contemporary policy debates over the cultural industries in trade.

CONCLUSIONS

The CUSFTA negotiations represented the first consultative period for the Arts and Cultural Industries SAGIT. The SAGIT displayed high levels of engagement in this

¹²⁰ Ibid.

period, with collaboration taking place between SAGIT members, and conflict characterizing the group's relations with the government. The state, alternative channels and reframing processes all played key roles in accounting for these outcomes of participation. In this first consultative period, the SAGIT exhibited active levels of engagement, and displayed intrasectoral collaboration and sector-governmental conflict.

The analysis of these empirical findings suggests a high level of consistency with the dissertation's working hypotheses. Most SAGIT participants perceived the behaviour of the state as inimical to their interests, but in the absence of more promising alternative channels, they actively participated in the consultations. This finding supports the dissertation's proposition that where participants perceive state behaviour as unfavourable, they will actively engage in consultations if they lack more promising alternative channels of influence.

The creation of the Canadian Culture/Communications Industries Committee at CUSFTA illustrates both the endogeneity of alternative channels and the active response of policy network actors to government structuring of relations with domestic constituencies. Cultural industries representatives, seeking a means to overcome the perceived weakness of the group's policy influence, helped to create the CCIC to present their views to government. The primary impetus for the creation of this alternative

¹²¹ As quoted in Trade News, "New Alliance to Fight Free Trade" *Cinema Canada*, Volume 156 (October 1988), 61.

channel for sector-governmental relations was the perceived inadequacy of the consultative channel the government created to manage relations in its domestic milieu.

The nature of intrasectoral and sector-governmental engagement also appears to support the study's theoretical assertions. At the intrasectoral level, reframing processes, in the form of trade liberalization, represented a formidable common threat to participants, promoting collaboration despite the diversity of the group.

Between the sector and the government, SAGIT members' perceptions of state behaviour strongly influenced the nature of the dynamics between the group and the government. Many members felt that public officials lacked concern for cultural issues in trade and this contributed to conflictual relations between the SAGIT and the government. These findings show consistency with the hypotheses of Chapter 2, specifically the assertion that where participants perceive state behaviour as unfavourable, this will lead to conflictual sector-governmental relations.

The following chapters investigate the level and nature of participation during the next two consultation periods and query the role of the state, alternative channels and reframing processes in accounting for outcomes of engagement in these subsequent consultations. Where useful, the chapters identify contrasts and draw comparisons between the three periods. The concluding chapter of the dissertation reviews SAGIT experiences at the three consultations, drawing comparisons and connections between all

three periods to explain SAGIT members' involvement in the process over time and to link the empirical findings with the working hypotheses proposed in Chapter 2.

CHAPTER 6

THE ARTS AND CULTURAL INDUSTRIES SAGIT AND THE NORTH AMERICAN FREE TRADE AGREEMENT

INTRODUCTION

The negotiation of the North American Free Trade Agreement followed relatively quickly on the heels of the bilateral trade deal between Canada and the United States. The CUSFTA entered into force on January 1, 1989, and after close to six months of indecision over its participation in the NAFTA talks, the Canadian government formally committed to the trilateral negotiations in the summer of 1990,¹ scarcely more than a year into the CUSFTA's implementation period. The three North American governments formally launched the negotiations on June 12, 1991, and completed them on August 12, 1992, fourteen months to the day after they began.²

The Sectoral Advisory Groups on International Trade again constituted a formal consultation channel for the government to hear the views of industry on the negotiations. Shortly after the entry into force of CUSFTA, the government announced a second round of SAGIT appointments, in the Arts and Cultural Industries SAGIT, maintaining several of the members from the CUSFTA period, but by and large announcing a new and different membership slate for the group. In October 1989, the government appointed a

¹ Maxwell Cameron and Brian Tomlin, *The Making of NAFTA: How the Deal was Done* (Ithaca: Cornell, 2000), 66.

number of labour representatives to the SAGITs, including two individuals heading major labour groups in the cultural sector.

This chapter examines the level and nature of participation in the cultural SAGIT during the prenegotiation and negotiation phases of the NAFTA. As noted in Chapter 1, existing empirical literature on federal consultations in the cultural industries sector suggests that consultations proceeded without the fractiousness characterizing the CUSFTA consultations.³ The research findings reported in this chapter support this contention. SAGIT participants at NAFTA did not characterize the relationship between the group and the government as conflictual, nor did they describe relations between SAGIT members as conflict-laden. Engagement at NAFTA also differed from the previous period in that a number of SAGIT members described their level of participation as passive. As the chapter discusses, the presence of passively engaged participants may have facilitated both intrasectoral and sector-governmental collaboration.

This chapter begins by examining the key events and issues respecting the cultural industries in the NAFTA negotiations. The Canadian government again faced contradictory demands at its domestic and trilateral tables, although in the NAFTA negotiations, the Mulroney government made its position on the cultural industries clear from the outset of the trade talks, stating that the cultural industries exemption was to be

² Cameron and Tomlin, *The Making of NAFTA*, xiii-xiv. The negotiations for the NAFTA "side deals" under the Clinton administration took place between March and August 1993.

carried over into the NAFTA. The second section of the chapter analyses participant engagement in the cultural SAGIT during this period, and examines the role of the state, alternative channels and reframing processes in accounting for the level and nature of participation. The chapter's third section discusses NAFTA negotiation outcomes for culture. As with the previous chapter, readers can refer to the timeline in Appendix B for highlights of the main events respecting NAFTA, major SAGIT milestones, and the key trade challenges in the NAFTA period.

THE CULTURAL INDUSTRIES IN THE NAFTA NEGOTIATIONS

The domestic and international politics surrounding culture and the cultural industries at the time of the North American Free Trade Agreement bore much resemblance to the politics at the time of the CUSFTA. Domestically, representatives of the cultural industries continued to voice their opposition to the negotiation of freer trade in the sector, while bilaterally, the Americans again pressured the Canadian government to undertake negotiations on cultural trade. The Mexicans, for their part (see below), appeared relatively unconcerned over the place of culture in the trilateral negotiations.

But despite the similarities for Canada domestically and bilaterally with the United States, the politics differed from the CUSFTA period in two important respects. First, in contrast to the apparent ambiguity of the Canadian government's negotiating position on the cultural industries at CUSFTA (i.e., culture was not on the table but

³ Maryse Robert, *Negotiating NAFTA: Explaining the Outcome in Culture, Textiles, Autos and Pharmaceuticals* (Toronto: University of Toronto Press, 2000), 89.

cultural industries might be), at NAFTA, the government articulated a clear and firm position from the outset. At a Financial Post Conference in Montreal some six weeks prior to the formal launch of the NAFTA trade talks in June 1991, Minister for International Trade Michael Wilson declared, "This Government insisted on maintaining special measures of support for its cultural industries when it negotiated the FTA. It is not prepared to negotiate now what was settled then."⁴ Canadian negotiators had an unambiguous mandate for the talks: "The main Canadian objective was very clear in NAFTA: the cultural exemption obtained in the FTA was *not* negotiable; culture was *not* on the table, which meant that the FTA's exemption would be carried over in NAFTA without any discussions."⁵

The second difference was the reportedly strong consensus at Canada's domestic table: the government, the cultural industries and the Canadian population were all committed to this negotiating position.⁶ It bears mentioning that in the short interval between the entry into force of the CUSFTA in January 1989 and the launch of the NAFTA negotiations in June 1991, no trade frictions or disputes emerged that would "test" the cultural industries exemption. The disputes involving Country Music Television, *Sports Illustrated*, and satellite broadcasting had yet to materialize, and the

⁴ As quoted in Robert, *Negotiating NAFTA*, 88.

⁵ Robert, *Negotiating NAFTA*, 45 (emphases in original).

⁶ Ibid.

frictions over the federal government's proposed licensing regime for film distribution predated this period, taking place in the late-1980s (as described in Chapter 4).⁷

One of the only major trade issues in the cultural sector in the interval between the two trade agreements pertained to American-owned Paramount Corporation's indirect acquisition of Ginn Canada Publishing Company. The Canadian government's inability to locate a domestic buyer for the firm resulted in amendments to the Baie Comeau policy in January 1992. The government tightened the prohibition on foreign firms establishing new book publishing and distribution companies in Canada by requiring that Canadian investors not only *hold* majority control of the firm, but that this *de jure* control by Canadians constitutes *de facto* control. The amendments arguably relaxed the policy respecting indirect acquisitions of existing foreign-owned companies, allowing foreign control in the sector if the foreign investor can demonstrate that the investment is of net benefit to Canada and to the Canadian-controlled portion of the book industry.

This policy amendment took place in the midst of the NAFTA negotiations, where Canada continued to encounter powerful resistance from the Americans. The United States pressured the Canadian government both prior to and during the NAFTA negotiations to include the cultural industries in the trade talks. In a report on bilateral

⁷ As Ritchie notes, one of the cultural trade issues to take place post-CUSFTA pertained to visas for Canadian performers and athletes. The American government applied new restrictions to the movement of individuals working in these cultural occupations across the American border. Canadian diplomatic efforts and lobbying in Congress were successful in decreasing the effect of these measures. (Gordon Ritchie, *Wrestling With*

trade in January 1991, President Bush described Canada's subsidies in the cultural sector as a continuing "irritant" to smooth bilateral relations.⁸ In February 1991, United States Trade Representative Carla Hills told the House of Representatives Ways and Means Subcommittee on Trade: "We do not favour cultural protection exemptions because we regard them as protectionist."⁹ She added that the US would not grant similar exemptions to Mexico.

Following the formal launch of the negotiations in June 1991, Hills went further, stating that she wanted Canada's cultural industries on the bargaining table.¹⁰ The American negotiators' main objectives in the cultural sector were two-fold: negotiating a comprehensive agreement on intellectual property rights and settling two outstanding trade irritants -- the cultural exemption and Canada's compulsory licensing regime for pharmaceuticals.¹¹ With respect to the cultural exemption, "[The Americans'] idea was to put as much pressure as possible on the Canadians in order to make at least some inroads in the cultural exemption."¹²

And while Mexico could potentially have been an ally for Canada in opposing the Americans in the cultural sector, the Mexicans did not appear concerned about the place

the Elephant: The Inside Story of the Canada-US Trade Wars (Toronto: Macfarlane, Walter & Ross, 1997), 224).

⁸ Bronwyn Drainie, "Round Two: Knockout?" *The Globe and Mail*, March 30, 1991, C3.

⁹ As quoted in "Culture Exemption Not Favoured in Trade Talks," *Globe and Mail*, February 22, 1991, C1.

¹⁰ Jonathan Ferguson, "Culture Stand Grows Confused as Mexico Sides with U.S. View," *The Toronto Star*, 16 June 1991, B4.

¹¹ Robert, *Negotiating NAFTA*, 49.

of culture in the negotiations. Mexican Trade Minister Jaime Serra Puche did not counter Carla Hills' views on the cultural industries, stating, "This is an issue that is not so relevant for Mexico."¹³ Mexico also made statements to this effect prior to the launch of the negotiations. Mexican President Carlos Salinas de Gortari stated that Mexico "has never felt the fear of American cultural domination that ignited anti-free trade sentiment in Canada in the late 1980s."¹⁴ In contrast, the country saw the United States as offering a market opportunity for Spanish language products "and dismissed the need for a cultural exemption."¹⁵

Moreover, Mexican negotiators maintain that the United States placed intense pressure on the country not to align with Canada on this issue. "The U.S. tactic was to isolate the Canadians by pressing Mexico not to side with Canada."¹⁶ A lead American negotiator confirms that the US informed Mexico that the Americans would not extend a cultural exemption to Mexico, "We told [Mexico] the U.S. culture industry gave us a lot of trouble with the Canadian cultural exemption: we would not put up with a cultural exemption for Mexico."¹⁷

¹² Ibid.

¹³ As quoted in Ferguson, "Culture Stand Grows Confused."

¹⁴ As quoted in Drainie, "Round Two".

¹⁵ Cameron and Tomlin, *The Making of NAFTA*, 143.

¹⁶ Robert, *Negotiating NAFTA*, 88.

¹⁷ As quoted in Cameron and Tomlin, *The Making of NAFTA*, 228.

Fearing that the government might yield to US demands on culture, the cultural industries began lobbying Ottawa again to protect the cultural exemption.¹⁸ Members of the Canadian Culture/Communications Industries Committee, the corporate lobby group established at CUSFTA by some of the largest firms in the sector, revived the committee in July 1991.¹⁹ This time around, the ten-member committee – which included the chairmen of Astral, Télémédia, and Maclean Hunter, and the presidents of Southam, WIC Western International Communications and Key Porter Books – counted among its numbers Gordon Ritchie, Canada's Deputy Chief Negotiator for the CUSFTA. Ritchie, who by this point had left the federal government and was working as a private consultant, voiced strong support for special protections for the cultural industries, stating, "The basic issue is that entertainment is not just like any other industry. ... Everybody gains from making a better widget to serve the whole North American market. But if everybody starts writing scripts for the highly ethnocentric American market, then we lose our Canadian culture."²⁰

The CCIC's primary objective was to maintain the exemption negotiated in the CUSFTA. In the words of one of its members, "By the time of the NAFTA, our purpose was to keep what we had."²¹ In his public account of his involvement with the CCIC, Ritchie assessed the committee's efforts as successful (see below).

¹⁸ Ferguson, "Culture Stand Grows Confused."

¹⁹ John Partridge, "Culture Guardians Regroup: Media Barons Recruit Ritchie," *The Globe and Mail*, July 17, 1991, B1,B4.

²⁰ As quoted in Partridge, "Culture Guardians Regroup," B4.

Throughout the negotiations, Trade Minister Wilson maintained that Canada's cultural industries were not on the negotiating agenda. In a speech to the Central Canada Broadcasters Association some two weeks after the formal launch of the negotiations, Wilson stated: "it is essential that our cultural industries not be on the [negotiating] table".²² He highlighted the importance of the cultural industries to national unity, stating that at issue was not simply the protection of an industry, "but what the industry does to bring us together as a country by maintaining those media links – the radio and television and publishing links – between different parts of the country."²³

And yet the pressure from the United States continued as Carla Hills persisted that negotiations on the cultural industries must take place, raising the issue yet again at the second Ministerial meeting in August 1991.²⁴ A Canadian official at this meeting noted that the three countries discussed the cultural industries, but assured reporters that "[Canada's] national interests will prevail".²⁵

These reassurances characterized the negotiating period. Wilson continued to maintain that Canada's cultural industries were not on the negotiating agenda; nonetheless the CCIC remained concerned well into the trade talks that negotiations on

²¹ Interview 1322.

²² As quoted in Canadian Press, "No Deals for Nation's Soul: Wilson Tells Broadcasters the Cultural Industries Need Not Fear Free-Trade Talks," *The Globe and Mail*, June 25, 1991, B3.

²³ Ibid.

²⁴ Drew Fagan, "U.S. Tries to Loosen Canada's Grip on Culture," *The Globe and Mail*, 21 August 1991, B4.

the cultural industries were being or could be undertaken.²⁶ The CCIC recognized from the outset of the trade talks that the federal government would face intense pressure from the Americans to negotiate on the cultural industries and that this would test its resolve. Ritchie indicated that part of the purpose of the CCIC was “to encourage the government to stick to its guns.”²⁷

Lobbying from the American entertainment industries emanated from three main sources: the Motion Picture Association of America (with Jack Valenti at its head), the International Intellectual Property Alliance (IIPA), and the Recording Industry Association of America (RIAA). As in the CUSFTA period, Valenti’s concerns extended beyond Canada’s domestic market to the global marketplace, seeking to avoid setting precedents for the cultural sector at the North American level that could then be used to secure exemptions in multilateral negotiations.²⁸ Indeed, as Cameron and Tomlin note with respect to the cultural exemption, “The United States was concerned as much [about an exemption for the Canadian market as it was] about the ‘contagion effect’ of Canada’s exemption on Mexico, and more broadly on the Europeans in the MTN.”²⁹

The IIPA, an alliance representing firms in the film, sound recording, and publishing sectors, was strongly opposed to the cultural exemption in the CUSFTA and to

²⁵ Laura Eggertson, “Canadian Culture on Table in Three-Way Trade Talks,” *Winnipeg Free Press*, August 21, 1991, 21.

²⁶ Richard Siklos, “Wilson Says Culture Not Negotiable,” *The Financial Post*, March 6, 1992, 6.

²⁷ As quoted in Partridge, “Culture Guardians Regroup,” B4.

²⁸ Drainie, “Round Two.”

its inclusion in the NAFTA.³⁰ The RIAA also strongly opposed the exemption. Its President, Jason Berman, maintained that even though the Canadian government had not used the exemption since the entry into force of the CUSFTA, the possibility of using the CIE to restrict imports of American sound recordings was very real.³¹ Berman is well known in the cultural community as an outspoken critic of Canada's cultural industries policy. He is said to have quipped to reporters at a major industry gathering in Toronto, "Canadian culture? There's more culture in a container of yoghurt!"³²

Minister Wilson continued to insist until the conclusion of the negotiations that culture was not on the negotiating agenda. Meanwhile, the United States continued to press hard for negotiations in the sector. Indeed, less than one month prior to the conclusion of the trade talks, unidentified sources told the *Toronto Star* that Carla Hills "renewed demands that Canada eliminate barriers on cultural trade during a private meeting with [Trade Minister] Wilson in New York on July 18."³³

²⁹ Cameron and Tomlin, *The Making of NAFTA*, 142-143.

³⁰ Ivan Bernier, "Les dispositions de l'Accord de libre-échange nord-américain relatives à la propriété intellectuelle et la clause d'exemption culturelle," dans *ALENA, droit d'auteur et droits voisins : impact de l'ALENA sur le droit d'auteur, les droits voisins et les industries culturelles* (Montréal : Actes de la journée d'étude, Association littéraire et artistique canadienne inc. (ALAI CANADA), le 15 janvier 1994), 23.

³¹ Ibid.

³² Interview 1321.

³³ "Culture Not Issue in Talks: Wilson," *The Toronto Star*, 22 July 1992, A2.

Both American and Canadian negotiators confirm that the cultural industries constituted a major issue in the end game.³⁴ In these final negotiations on culture, Canada possessed considerable leverage for two reasons. First, the country already had an exemption for culture in the CUSFTA and could therefore theoretically walk away from the negotiations and attain its goal. "In the worst-case scenario, Canada could have walked away from the NAFTA table and achieved its main objective [of maintaining the cultural exemption] unilaterally, because the FTA would still have protected the cultural industries."³⁵

Second, for the United States, it became extremely important to conclude the negotiations rapidly. With a presidential election soon in the offing, President Bush sought a deal before the Republican convention in mid-August. For Canada, meanwhile, the negotiations were not time-sensitive, and the country used this to extract concessions from the Americans at the last hour. "U.S. negotiators admitted that once the political decision had been made to complete a deal in time for the Republican convention, their position [on the cultural industries] became impossible. 'Canada could just keep saying no, no, no and the US would have to concede in order to get a deal.'"³⁶

The final text of the NAFTA examined in the last section of this chapter conducts a two-level analysis of the agreement's provisions respecting the cultural industries,

³⁴ Robert, *Negotiating NAFTA*, 90 and Cameron and Tomlin, *The Making of NAFTA*, 142, 173.

³⁵ Robert, *Negotiating NAFTA*, 86.

³⁶ Cameron and Tomlin, *The Making of NAFTA*, 173.

identifying its domestic and international edges. The analysis suggests that the ambiguity and debate surrounding the extent of protection the exemption affords the cultural industries, continued into the NAFTA period. One of the main dimensions of this debate concerns whether and/or the degree to which NAFTA's provisions on intellectual property lie within the scope of the exemption.

PARTICIPANT ENGAGEMENT IN THE SAGIT PROCESS

Of the three consultation periods examined in this study, the NAFTA interval stands out in terms of the diversity of reactions of group members to the consultation process in which they took part.³⁷ Participants tended to either view the process quite favourably and engage actively in the consultations, or they held very negative perceptions of the SAGIT and engaged only passively in the proceedings. The SAGIT exhibited collaborative dynamics at both the intrasectoral and sector-governmental levels, and in this period of the consultations, the decisions of a number of passively engaged participants not to voice their opposition to the discussions of the group appear to have facilitated collaboration along both intrasectoral and sector-governmental lines.

As Chapter 2 explained, this study tests the hypothesis that state behaviour and alternative channels constitute important factors shaping the level of participant engagement in a consultation. The dissertation hypothesizes that members of a

³⁷ As in the previous chapter, this analysis draws primarily from personal interviews with SAGIT members, public officials that worked directly with the SAGITs, and members of the cultural industries milieu. It incorporates relevant secondary sources to enrich the analysis.

consultation will tend to actively engage in the process when they believe state conduct favours their interests. This outcome will obtain regardless of the number and/or quality of alternative channels for interest representation. In contrast, when participants feel that state behaviour adversely affects their interests, alternative channels will tend to influence their level of engagement. Where they believe there are more (few) promising alternative mechanisms to pursue their policy goals, they will tend to disengage from (actively engage in) a consultation process. Participants may engage passively in consultations for strategic or auxiliary aims.

Chapter 2 proposed that reframing processes will shape the *nature of engagement*, specifically, where these developments pose threats or generate opportunities for consultation participants, the members will tend to exhibit intrasectoral collaboration (intrasectoral conflict) where the threat/opportunity aligns (uncouples) their interests. Participants who engage passively in the consultation can facilitate intrasectoral collaboration if their passivity works to decrease conflict within the group.

This study further proposed that state behaviour molds the nature of engagement between consultation participants and the government. If the participants perceive that state conduct hinders (advances) their interests, conflict (collaboration) will more likely characterize sector-governmental relations. Passively engaged participants may facilitate sector-governmental collaboration where they do not actively conflict with the government.

The working hypotheses of this dissertation propose that the consultation outcomes noted above – active engagement of a core group of consultation members, intrasectoral collaboration, and sector-governmental collaboration – will result where participants view state behaviour as favourable to their interests and in the presence of reframing processes aligning participant interests. In contrast, participants will disengage from the consultation when they perceive that state behaviour is inimical to their interests and that there are more promising alternative channels through which to pursue their policy objectives. These latter participants will decide to engage passively (i.e., not to disengage entirely) if they believe there are indirect benefits of maintaining their presence in the consultation. As explained in the proceeding paragraphs, the empirical findings at NAFTA lend support to these working hypotheses.

Level of Engagement

Participants in this second consultative period tended to display either very active or very passive levels of engagement in the consultation. The majority of participants indicated they maintained active participation levels, noting that they attended the meetings of the group, regularly contributed to the group's discussions, and actively shared their points of view with other group members.³⁸ These participants attributed their high engagement levels to a number of factors, notably their belief that they could make a positive contribution to the group's deliberations because of their knowledge and expertise in the sector, their personal and professional interest in cultural policy and trade, and their corporation's or sector's financial interest in the negotiations. One

participant also felt that his experience as a former public servant in the cultural policy sector and his private sector experience across a variety of cultural industries subsectors provided him with “a sense of how things worked” in cultural policy-making, which made him feel that he could contribute constructively to the workings of the SAGIT.³⁹

In contrast to those who actively engaged in the SAGIT process, three SAGIT members engaged passively in the consultations and indicated they often did not share their opinions with the group, even when their points of view opposed those of their fellow SAGIT members or government officials.⁴⁰ Two of these participants spoke very disparagingly of their experience in the consultation, stating, for example, that the consultation “was a waste of time” and that they were “happy when it was over.”⁴¹

When asked why they did not engage more actively in the consultations, these individuals pointed to three main reasons. First, two felt that they lacked the sufficient expertise to contribute to the deliberations of the group. They indicated that their personal and professional interests and training did not pertain to the issues under discussion. They did not feel that they could add value to the SAGIT’s talks because they lacked practical experience in matters of cultural trade and did not have a sufficient understanding of the issues. In the words of one of these participants, “My contribution

³⁸ Interviews 1307, 1308, 1324, 1329, 1330, 1331, 1332, and 1333.

³⁹ Interview 1324.

⁴⁰ Interviews 1325, 1327 and 1330.

⁴¹ Interviews 1325 and 1327, respectively.

and/or knowledge of cultural property was about nil. ... I said to myself 'I have no idea – nothing to contribute or say.'"⁴²

Second, one believed that the government drove the agenda of the group and through judicious membership selection and steering of the group's discussions, pre-ordained the group's recommendations. This individual believed that his contributions would do little to influence government policy in the cultural milieu. And third, one member felt the government did not adequately inform the group's members of the objectives, issues, or context of the SAGIT's work. Lacking sufficient orientation to the workings of the group, this individual hesitated to contribute more actively in the consultation process.

Of these three passively engaged participants, one disengaged entirely from the group, while the other two continued to attend SAGIT meetings. The SAGIT member that resigned from the group indicated that trade liberalization did not negatively affect his organization as it did the other industry sectors around the SAGIT table. "We weren't terrified of the Americans like the others were."⁴³

When asked why they did not disengage from the process, the other two individuals identified two main reasons for continuing to attend SAGIT meetings. One viewed his presence as necessary because he represented an organization that received

⁴² Interview 1330.

⁴³ Interview 1330.

government funding: "The government supported my organization therefore I had to go."⁴⁴ The other deemed participation essential in order to protect his subsectoral interests. This individual felt that other members of the cultural industries might "gang up" on his industry segment if he disengaged from the consultation. For this individual, physical presence was an important means to deter other members of the consultation from making recommendations to the government that might prove detrimental to his sector. This participant likened his presence to a "negative blocker" against other members of the industry "being tough" on his industry segment.⁴⁵

The subsequent section assesses these empirical findings in light of the study's working hypotheses and further describes the factors accounting for participants adopting either active or passive engagement levels. Before this, the section below examines the nature of participant engagement in the NAFTA consultative period.

Nature of Engagement

Similar to the SAGIT experience at CUSFTA, the majority of participants remarked on the diversity of the consultative group's membership. In line with the CUSFTA consultation period, they noted the broad range of subsectoral interests appointed to the SAGIT. Only two participants found that the SAGIT did not represent the breadth of the cultural sector.⁴⁶ These individuals described the SAGIT as "pretty industrial" and felt that the group did not include sufficient representation of individual

⁴⁴ Interview 1327.

⁴⁵ Interview 1325.

artists and creators, and organizations representing creative interests. For the other members, the SAGIT did span the breadth of the cultural milieu.

In contrast to the CUSFTA period -- where participants pointed to the differences between group members in terms of arts practitioners versus private sector interests -- at NAFTA, two members noted that a second dimension of diversity pertained to differing levels of experience, expertise and knowledge among group members.⁴⁷ The members of the SAGIT at NAFTA ranged from leaders of some of Canada's largest firms in the cultural industries, to specialists in international trade law, to individual artists and artisans. In the view of these individuals, SAGIT members varied considerably in terms of their levels of expertise and knowledge respecting the cultural industries in trade, as well as their experience in policy-oriented meetings and in groups seeking to collaborate across intrasectoral lines.

All participants described the dynamics between group members as collaborative rather than conflictual. One member indicated that although some SAGIT members were "more aggressive" than others, "[There was] no real confrontation between members of the SAGIT," and characterized the overall group dynamics as "very collaborative."⁴⁸ Most participants noted that SAGIT members held differing opinions on specific issues,

⁴⁶ Interviews 1329 and 1331.

⁴⁷ Interviews 1324 and 1327.

⁴⁸ Interview 1330.

but that conflict did not dominate the work of the group. According to one member, “[There were] a lot of totally opposing views, but it was civilized discussion.”⁴⁹

Another respondent described the dynamics of the group as follows: “Everybody was basically on the same wavelength in terms of being concerned [about culture and trade]. ... [I was in the] minority on specific questions, but not [on] general questions. [There was] agreement on that one principal issue, [that] one starting point.”⁵⁰

Three members raised a number of caveats respecting the use of the term “collaboration” to portray group dynamics.⁵¹ First, although “everyone knew that culture should be off the table,” the cross-sectoral diversity of the group and the differing levels of member experience, expertise and knowledge led to the discussion of issues only at the broadest levels and with relatively little intrasectoral dialogue.⁵²

Second, the group tended to focus on identifying broad directions for Canada’s cultural policy in trade rather than addressing substantive issues in the country’s domestic cultural policy framework (e.g., the level of foreign ownership restrictions and reconceptualizing the meaning and definition of Canadian content in various cultural industries sectors). These participants noted that broaching these potentially more contentious issues could have generated conflict within the group, but given the group’s

⁴⁹ Interview 1332.

⁵⁰ Interview 1329.

⁵¹ Interviews 1324, 1325 and 1327.

⁵² Interview 1324.

discussion of issues at broader and more general levels, the intrasectoral dynamics were “very friendly,” exhibited “very little conflict,” and in the words of this participant, “everybody felt good and thumped themselves on the back but it didn’t do anything.”⁵³

Third, one participant indicated that more detailed discussions took place between some of the group’s specialists in international trade, but he stated that because some members possessed little knowledge of the issues, they did not actively participate in these discussions.

Notwithstanding these caveats, all participants indicated that the group unanimously agreed that culture should not be on the negotiating table. According to one participant, “In the end, everybody’s interests were the same – trying to explain to the US and US negotiators what we mean by culture.”⁵⁴

Collaboration also characterized the sector-governmental dynamics at NAFTA. While a number of members pointed to the challenges of relating to trade negotiators and officials in DFAIT (see below), all participants interviewed for this study characterized the relations between the SAGIT and the government as collaborative. Participants described SAGIT-government relations as “very good” and stated that the government was “professional and helpful and thoughtful.”⁵⁵ One SAGIT member spoke very positively of the trade negotiators in particular stating that the “best meetings” were “the

⁵³ Interview 1325.

⁵⁴ Interview 1331.

ones with the trade negotiators.”⁵⁶ This individual stated that he was “impressed” by the negotiators, and remarked with respect to negotiators’ knowledge of the cultural industries, “I was impressed by the knowledge they had of what we were about.”

While participants at NAFTA described the overall sector-governmental relationship as collaborative, six individuals identified a number of challenges of relating to officials at External Affairs and International Trade Canada.⁵⁷ Five participants remarked on the difficulty of making cultural policy arguments to the department because economists and trade specialists at EAITC require that arguments be constructed, supported and grounded in purely economic terms.⁵⁸ One SAGIT member summed the issue up as follows:

“[Public officials at EAITC] have very little appreciation for cultural issues. The Deputy Minister and Assistant Deputy Ministers are used to international trade issues with large numbers. [Culture] is a waste of time for them. They have not by personal or professional experience come to understand cultural issues. They don’t have the inclination...they don’t see the nuances and the impacts. You can’t measure [culture] in money like you can in the manufacturing industries. Ideas, perceptions, creative sectors... [These] are domains that escape them completely.”⁵⁹

⁵⁵ Interviews 1330 and 1332.

⁵⁶ Interview 1331.

⁵⁷ Interviews 1307, 1324, 1327, 1329, 1332 and 1338.

⁵⁸ Interviews 1307, 1324, 1329, 1332 and 1338. These individuals did not confine their remarks to departmental officials in the NAFTA period alone; they indicated that these characteristics of the officials have always dogged relations between the sector and the department, and continue to challenge relations up to the time of writing of this dissertation.

⁵⁹ Interview 1333.

Another SAGIT member stated that the relationship between cultural industries representatives and the Department of Communications “had always been there,” but that “I don’t think anybody had worked with DFAIT much before.”⁶⁰ Although this individual characterized the relationship with External Affairs’ officials in the NAFTA period as “more cordial” than relations at CUSFTA, his comments respecting trade negotiators echoed those of the SAGIT member above: “[The] people who are actually doing the [trade] negotiations don’t have a sophisticated enough understanding of cultural issues.”⁶¹ This respondent described the nature of his relationship with departmental officials as a “grudging mutual respect.”

The sixth member stated that in his view EAITC operated (and continues to operate) with more process and artifice relative to other government departments and that this challenges relationship-building with officials. This individual characterized public officials at DFAIT as serious, somber, and excessively protocol-oriented, and remarked in this regard, “You just want to say, ‘lighten up’ [to public officials at DFAIT].”⁶²

Assessment of Working Hypotheses

This dissertation hypothesizes that the consultation outcomes at NAFTA – active levels of engagement of a core group of SAGIT members, passive engagement of some members, intrasectoral collaboration, and sector-governmental collaboration – would obtain where a core group of participants perceive that state behaviour favours their

⁶⁰ Interview 1329.

⁶¹ Ibid.

interests (F) and where reframing processes align member interests (A). For the active group, the number of alternative channels would not condition their level of engagement (M or F) because they perceive state behaviour as favourable to their interests.

The dissertation further proposes that participants will engage passively where they believe state behaviour is inimical to their interests (I) and they can pursue their policy objectives through alternative channels (M). They will continue to engage, however, where they believe they will benefit from continuing to attend the consultations.

Figure 8 on the following page illustrates these empirical findings and their related hypotheses using shaded boxes and letters, respectively. The sections below examine the degree of consistency between the dissertation's theoretical assertions and the consultation outcomes at NAFTA. The analysis suggests that the level and nature of engagement in the SAGIT consultations at NAFTA displays a strong level of consistency with the study's hypotheses.

Role of the State

Participant perceptions of the behaviour of the state influenced both the level and nature of engagement in the Arts and Cultural Industries SAGIT in this second consultative period. The membership, bureaucratic resources and perceived policy influence of the group represented significant factors in accounting for the consultation

⁶² Interview 1327.

Figure 8: Consultation Outcomes at NAFTA

outcomes, with the first and the third of these factors constituting central variables underpinning engagement.

Membership. Membership selection played a key role in influencing the level and nature of participant engagement in the consultation. As noted above, the majority of SAGIT members described the group as broadly representative of the cultural industries sector, in that its membership included representation from a range of cultural industries subsectors (i.e., print media, film and television, sound recording, etc.) and across the stages of the creative process (i.e., creators, producers, distributors, etc.).

As shown in Table 16 on the following page, the group comprised 24 members, an increase of ten members from the size of the group at CUSFTA. While the government reappointed two of the SAGIT members from CUSFTA as well as two individuals who served on the International Trade Advisory Committee (the general trade advisory body) at CUSFTA, in the main, the SAGIT membership at NAFTA represented a fresh membership slate. The group included four practicing artists, three specialists in the cultural industries and trade, and majority representation from the cultural industries, with seventeen industry members. Of these latter cultural interests, over half (nine) hailed from the film and television sector, and the remainder from the sound recording (two), publishing (three), and visual and performing arts (three) sectors. The industry members were generally the chief executives of their organizations, and most of the creative interests were individual practicing artists.

Table 16:
NAFTA Arts and Cultural Industries SAGIT – Membership Distribution

Creative Interests	Specialists	Industry Subsectors ⁶³			
		Film & Television	Sound Recording	Print Media	Visual and Performing Arts
4	3	9	2	3	3

As noted in the previous chapter, two study participants that did not sit on the SAGIT at CUSFTA or NAFTA (one a non-SAGIT member and the other a SAGIT member post-NAFTA) stated that the Arts and Cultural Industries SAGIT pre-NAFTA appeared “strange” in relation to its counterparts in other industry sectors.⁶⁴ These individuals indicated that membership selection for the cultural SAGIT was a far more political process than for other industry sectors and that the SAGIT included nationalist artists opposed to free trade.

SAGIT members’ comments respecting the membership of the group both directly and indirectly accorded high importance to membership selection in accounting for the level of their participation. As discussed above, when asked what they thought led to their appointment to the group, most believed the government invited them for their expertise, while others felt they were nominated for the sector, organization, or ethnic group to which they belonged. Those that attributed their appointment to their expertise or to the organization or sector they represented, noted that this prompted high

⁶³ Several of these corporations operated across a number of sub-sectors, but the majority of the firms on the SAGIT conducted their business in a single industry subsector only. The table categorizes horizontally integrated firms into the main sector of their business activity.

⁶⁴ Interviews 1311 and 1322.

levels of engagement. They felt that they could meaningfully contribute to the group's deliberations by sharing their expertise or representing the interests of their sector. For example, one member stated of his high activity levels in the group: "[I had] a strong background in film, records, magazines and books – a sense of the different sectors ... a sense of how things worked."⁶⁵ Another member noted the importance of the negotiations to his company and described the reason for his active participation in the group as "enlightened self interest."⁶⁶

For other participants, particularly those that felt they were appointed to the group for reasons other than their sectoral or organizational expertise (e.g., because of their ethnicity), their relative lack of expertise accounted for their passive engagement levels. As noted previously, one participant's choice to passively engage in the consultations (rather than disengage) stemmed directly from the diversity in the membership of the group. Despite the member's belief that the SAGIT possessed no policy influence, the individual chose to engage passively to ensure that the group did not speak disparagingly of his industry segment because he believed that other segments of the cultural industries tended to be "tough" on his subsector.⁶⁷

The SAGIT's membership during the NAFTA negotiations also constituted an important factor helping to generate collaboration both among group members and between group members and the government. First, the appointment of a number of

⁶⁵ Interview 1324.

⁶⁶ Interview 1332.

members with relatively little experience with or understanding of the issues pertaining to culture and trade served to reduce the potential for conflict between group members. As mentioned, SAGIT members lacking expertise in culture and trade tended to engage passively in the consultations, a factor that indirectly facilitated collaboration within the group. Those who felt they possessed insufficient knowledge of the issues tended not to actively partake in group deliberations or actively conflict with other members of the group.

Second, as noted earlier in this section, the diversity of member interests and the varying levels of expertise and experience of SAGIT members also facilitated collaboration because the group tended as a result to discuss issues in broader terms. At higher levels of generality, members discussed issues that the group could more readily agree on. In the words of one study participant, "It's when you start talking about more specific policy issues such as foreign ownership levels that the cultural sector breaks down."⁶⁸

Third, as discussed in the section below on policy influence, one participant felt that the government appointed members to the SAGIT that held the same policy views of the then Minister of Communications.⁶⁹ In the view of this participant, the government designed the SAGIT to generate collaborative business-government relations.

⁶⁷ Interview 1325.

⁶⁸ Interview 1324.

Resources accorded to the group. In keeping with the findings at CUSFTA, SAGIT members at NAFTA expressed overall satisfaction with the level of financial resources allocated to the group. None of the study participants felt that they should have received remuneration in excess of travel expense reimbursement, and no SAGIT member indicated that the lack of remuneration affected the level or nature of their participation.

In general, participants also felt satisfied with the level of bureaucratic support the SAGIT received and noted that officials from both External Affairs and International Trade Canada and the Department of Communications attended meetings of the group.⁷⁰ With the exception of comments from three of the participants, participants indicated that the extent of bureaucratic support did not bear significantly on the level or nature of participation. The first of these individuals noted that many of the public servants attending group meetings lacked experience in the area of culture and trade, and that this compromised sector-governmental relations.⁷¹ The second participant stated that SAGIT members received inadequate orientation from the government as to the issues under

⁶⁹ Interview 1325.

⁷⁰ One participant characterized the relationship between the Department of External Affairs and the Department of Communications as competitive, stating that the two departments compete for "the money and the power" to undertake cultural initiatives abroad. The individual was not in favour of External Affairs holding this responsibility because he believed that international cultural initiatives, such as supporting the Royal Winnipeg Ballet to tour internationally, would become a tool of Canada's foreign policy under the direction of External Affairs. The respondent believed, for example, that the department would discontinue supporting the ballet to visit a particular country if Canada became involved in a dispute with its government. (Interview 1324.)

discussion and the terms of reference of the SAGIT, and felt this challenged his capacity to actively engage in the consultation.⁷² The third participant characterized the level of bureaucratic support as inadequate with respect to information provision to the group.⁷³ This individual stated that on several occasions departmental officials failed to keep the SAGIT abreast of relevant developments in trade negotiations.

Overall, however, study participants felt satisfied with the level of financial and bureaucratic resources accorded to the group and noted that these factors did not significantly influence the level and nature of their participation.

Policy Influence. In keeping with the diversity of member responses to the SAGIT process at NAFTA, study participants expressed differing opinions as to the degree of policy influence of the SAGIT. As the paragraphs below describe, these perceptions tended to condition individual members' engagement levels, as well as the nature of the group's relations with the government.

Almost half of the members felt that the SAGIT possessed some or considerable policy influence,⁷⁴ stating, for example, that they were "impressed" that the government listened to the views of the group, and that their initial reservations that the process could

⁷¹ Interview 1324. This respondent also stated that the "physical set-up" of the consultations challenged dialogue between SAGIT members because the table they used was very large.

⁷² Interview 1327.

⁷³ Interview 1338.

⁷⁴ Interviews 1308, 1329, 1332 and 1333.

represent a government attempt to coopt and silence participants proved wrong: “[Co-option] was not the case – the government genuinely was seeking consultation.”⁷⁵ All of these SAGIT members indicated that they engaged actively in the process in order to represent their personal and professional interests and to attempt to influence government policy.

Half of the participants felt unsure as to the extent of the group’s policy influence but tended to speak favourably of the government in the consultations.⁷⁶ One stated they were impressed with the trade negotiators, and noted with respect to SAGIT meetings with negotiators: “If anything [the SAGIT] reinforced their position. ... Our responses were confirmation of what they already thought.”⁷⁷ Another believed that the government did not use the group as a means of co-optation: “I didn’t get a sense that the government had the bottom line already set. The government was genuinely seeking input. It was an honest game.”⁷⁸

Most of these individuals engaged actively in the consultations. Despite their uncertainty as to the extent of the group’s effect on government policy, they believed in the importance of making their views known to government and trying to raise the profile of the cultural industries in trade negotiations. According to one of these participants,

⁷⁵ Interviews 1308 and 1332.

⁷⁶ Interviews 1307, 1324, 1327, 1330, and 1331.

⁷⁷ Interview 1331.

⁷⁸ Interview 1330.

“the most you can do [in consultations] is try to make sure the decision-makers have the necessary information ... make sure they’re informed as much as possible.”⁷⁹

Only one respondent described the policy influence of the group as “about nil,” stating that the government “carefully orchestrated” the SAGIT process to generate the advice the Minister of Communications desired. This individual engaged passively in the consultations, indicating that he did not share dissenting views with the group because he did not believe the SAGIT possessed real policy influence. In the words of this member, “You could steer the SAGIT from extreme to moderate but not from left to right. It was all set up by the Minister or the Minister’s office to generally agree on what they’d already agreed on.”⁸⁰

This participant viewed the SAGIT as a vehicle for the government to reinforce or legitimize existing cultural industries policy measures. That is, the SAGIT represented a tool for the Minister of Communications to demonstrate industry support for his views, and as such, appointed members to the group sharing similar views. This individual also noted that the SAGIT enabled representatives from the cultural industries to lobby officials from the Department of Communications on behalf of their sector, and as such, served as a forum for interest representation for industry recipients of government grants and contributions.

⁷⁹ Interview 1324.

⁸⁰ Interview 1325.

SAGIT members' views of the policy influence of the group tended to affect the nature of participation along both intrasectoral and sector-governmental lines. Intrasectorally, the member who felt the SAGIT possessed no policy influence engaged passively in the consultations despite his opposition to the substance of much of the group's discussions. This muted active conflict in the group and indirectly facilitated collaboration among its members.

Perceptions of the SAGIT's influence also worked to shape the nature of engagement observed between the sector and the government. SAGIT members who believed the group possessed policy influence tended also to be those who characterized relations with the government as the most collaborative. SAGIT members expressing uncertainty as to the extent of the group's policy impact tended nonetheless to speak positively of government conduct in the consultations, particularly the perceived openness of the government to listening to the views of the group. The members who engaged passively indirectly promoted sector-governmental collaboration, particularly the individual who held opposing views but chose not to voice these opinions.

As noted in the previous chapter, a number of participants interviewed for this study who did not serve on the SAGIT in the pre-NAFTA period felt that the group possessed minimal policy influence at NAFTA. They described the government's objectives for the SAGIT as "wanting to be seen to be consulting," depicted the SAGIT as "ineffective," and stated that substantive consultations with the sector took place

through alternative channels (see below). According to these participants, the state behaved strategically at NAFTA as it did at CUSFTA, undertaking the “real consultations” through alternative means.

Role of Alternative Channels

The dissertation hypothesized that where participants perceive state behaviour as favourable to their interests, they will engage actively irrespective of the number of alternative channels. In contrast, where consultation members view state behaviour as inimical to their interests, they will disengage from the consultation if they believe they can pursue their policy objectives through other means. The findings at NAFTA lend support to these theoretical assertions.

Participants who viewed government behaviour favourably tended to engage actively in the group, even in the presence of alternative channels. Actively engaged participants noted that they could seek to influence the government through other channels (e.g., by lobbying departmental officials or ministers), but they viewed these alternative channels as complementary to their engagement in the SAGIT process. As such, they participated in the SAGIT and simultaneously pursued their interests through alternative channels as well. These channels included direct communication with the Minister of Communications as well as representations to trade negotiators in the Department of External Affairs.

In contrast to these actively engaged participants, the SAGIT member who believed the SAGIT process bore little influence on government policy did not actively pursue his interests in the SAGIT, choosing instead to avail himself of alternative channels for interest representation. This individual regarded participation in the SAGIT versus alternative channels as mutually exclusive rather than complementary, maintaining that “real policy decisions” did not take place in the SAGIT.⁸¹ Rather, direct communication between himself and the Minister of Communications, the Secretary of State for External Affairs, or their officials constituted the more promising and influential channels of influence.

In addition to these direct sub-sectoral interactions with the government, a number of firms and individuals in the cultural industries sector revived the Canadian Culture/Communications Industries Committee in the lead-up to NAFTA. As noted earlier in this chapter, in the NAFTA period, Gordon Ritchie, Deputy Chief Negotiator during the CUSFTA negotiations, joined the group.⁸² The CCIC again counted among its membership two SAGIT members (different individuals than in the CUSFTA period), including the chair of the SAGIT. The CCIC’s objective for NAFTA was to convince the government to maintain the cultural exemption negotiated at CUSFTA. According to Ritchie, “The government did not need a great deal of persuasion. It stuck to its guns in the NAFTA, maintaining the cultural exemption intact.”⁸³

⁸¹ Ibid.

⁸² Ritchie, *Wrestling With the Elephant*, 224.

As at CUSFTA, a number of study participants, including members of the CCIC, trade negotiators and SAGIT members in the post-NAFTA period, noted that the “real consultations” between the government and the sector took place in the CCIC, rather than the SAGIT.⁸⁴ These individuals maintained that the government utilized the SAGIT “to be seen to be consulting” with both creative and business interests, while undertaking the more substantive business-government consultations via the CCIC. As noted in the previous chapter, interviews with members of the CCIC who also sat on the SAGIT suggest that these individuals did not view the CCIC as a competitor to the SAGIT, but rather as a “private sector initiative” to provide “extra support” for the cultural industries in the event that the SAGIT proved ineffective in persuading the government to exempt the sector from trade agreements.⁸⁵

As described earlier, at NAFTA, the CCIC was a very active group, repeatedly and successfully pressuring International Trade Minister Michael Wilson to maintain Canada’s cultural exemption. The group wound down following the conclusion of the NAFTA negotiations. In the words of one of its members, “We won. It wasn’t necessary to continue the Committee.”⁸⁶

⁸³ Ibid, 224.

⁸⁴ Interviews 1311, 1312, and 1322.

⁸⁵ Interviews 1332 and 1334.

⁸⁶ Interview 1312.

Role of Reframing Processes

As noted in Figure 9, the dissertation hypothesized that where reframing processes align participant interests, this will result in collaborative dynamics at the intrasectoral level. Further, Chapter 2 proposed that passively engaged participants can facilitate collaboration – or at least the appearance of collaboration – where they do not voice opinions contrary to those of the group. The findings at NAFTA lend strong support these theoretical assertions.

As noted in the above section examining the nature of SAGIT participant engagement at NAFTA, the group displayed collaborative relations despite the diversity of its membership along both intrasectoral and experiential lines. Study participants remarked that all of the subsectors of the cultural industries were concerned about the fate of Canada's cultural industries exemption in the NAFTA negotiations. Interviews with SAGIT members revealed that this common threat had the effect of aligning member interests and that it underpinned the collaboration among members.

Trade liberalization at the CUSFTA and subsequently at NAFTA represented a common danger to the sector. One member stated, "[There was a] sense of threat to the cultural industries and cultural agencies after the [Canada-United States] Free Trade Agreement."⁸⁷ One member characterized SAGIT members' interests as regards trade with the United States as "the same" and elaborated as follows: "Everybody's interests are the same. ... If you're trying to make Canadian movies about Canadian subjects you

have the same problems as Maclean's Magazine, as records, or as staging a show."⁸⁸

SAGIT members viewed the consultation as a useful opportunity for the sector to develop a common position. According to one respondent: "[The SAGIT was the] first time we sat down in a government-sanctioned group as a sector. ... Individual sectoral interests are often the only focus. [It was] good to hear other sectors' concerns – trying to channel it into one basic approach to culture."⁸⁹

The common threat that trade liberalization represented to the various subsegments of the sector represented a powerful force promoting collaboration among sectoral representatives. While respondents acknowledged that some subsegments of the industry had collaborated prior to this time, they characterized the level of collaboration in the SAGIT in response to trade liberalization as more extensive. One member described the change as follows:

"[The SAGIT] actually carried forward a very strong common position. Because the reality is, from whatever side you come from in the sector – actor, producer, or creator – there's a certain understanding, there's a symbiosis: if we lose these policies that will have an impact on the whole sector. On that point, there is a commonality of interest. ... [Before the CUSFTA] it's true that we would work together on certain files – film and television and sometimes broadcasting – [but] nowhere near the same level of collaboration as post-FTA – no cross-industry collaboration. ... It didn't reach that 'next stage' until the FTA. The threat of the FTA took us to the next stage of collaboration."⁹⁰

⁸⁷ Interview 1324.

⁸⁸ Interview 1333.

⁸⁹ Interview 1324.

⁹⁰ Interview 1329.

In addition, the passive engagement of a number of individuals appears to have facilitated collaboration. One study participant noted that the cultural industries are “notoriously protectionist” and that although he felt the sector does require some protection, Canada’s policies “go overboard” in protecting and supporting the country’s cultural industries.⁹¹ This individual noted that these views ran counter to those of the group, but chose not to voice these opinions, a decision which indirectly facilitated group collaboration.

These findings show consistency with the study’s hypotheses, but as noted previously, the alignment of SAGIT member interests occurred at a very broad level. Participants themselves noted that interest alignment in the cultural sector “breaks down” on more specific issues, such as foreign investment restrictions and the meaning and definition of Canadian content. One of the individuals in the cultural sector interviewed for this study noted that “the diversity of policy interests of SAGIT members is in itself a government ‘consultative strategy’”.⁹² Chapter 8 will return to this issue.

NEGOTIATION OUTCOMES

Article 2106 of NAFTA, entitled, “Cultural Industries,” refers to Annex 2106 of the Agreement. It provides that with respect to the cultural industries, the provisions in

⁹¹ Interview 1325.

⁹² Written communication from confidential and anonymous source, file no. 1316.

CUSFTA shall govern any government measures maintained or adopted on the cultural industries between Canada and the United States. NAFTA's Annex 2106 states:

"Notwithstanding any other provision of this Agreement, as between Canada and the United States, 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*."⁹³

In the NAFTA, Canada appears to have maintained the status quo, a cultural industries exemption. In some respects, the NAFTA exemption for the cultural industries goes beyond the status quo because it is broader than its CUSFTA counterpart. Annex 2106 extends the exemption to Canada's trading relationship with Mexico, as well as to any other country that accedes to NAFTA in the future. NAFTA's CIE also enlarges the scope of its CUSFTA predecessor in that the definition of "cultural industries" under NAFTA includes *individuals* engaging in the cultural industries activities covered by the agreement, not just firms.

But despite these differences, NAFTA's CIE largely carries over the CUSFTA exemption. The Americans again possess the right to retaliate with measures of equivalent commercial effect, a feature of the CIE prompting criticism. "The NAFTA cultural exemption gives the U.S. an enormous club to defend its commercial interests

⁹³ The exception in Article 302 refers to Canada's elimination of tariffs on a number of cultural goods.

against Canadian policies.”⁹⁴ As discussed in the previous chapter, the retaliatory clause can potentially build a deterrent effect into cultural industries policy-making in Canada, in essence, placing the government in a position where it must weigh the benefits of any new cultural measures that would be inconsistent with its regional agreements against the potential cost of American retaliation to the Canadian economy – not to mention business-government relations with the industry targets of US retaliation.

In the NAFTA period, the debate over the relative protection the CIE affords the cultural industries extends to the question of intellectual property rights. While the Americans sought a comprehensive chapter on intellectual property in the CUSFTA negotiations, they were unsuccessful in securing this outcome.⁹⁵ As noted above, the negotiation of a comprehensive deal on intellectual property constituted a major goal for the Americans going into NAFTA.

In the intellectual property negotiations, culture constituted a major stumbling block. Cameron and Tomlin note: “...the principal controversy over [the intellectual property] chapter centred ... on the aspects of intellectual property that would not be covered by its provisions. ... To the bitter disappointment of U.S. negotiators, the Canadian cultural exemption [in CUSFTA] was preserved in Annex 2106 of the

⁹⁴ Geoff Elliot, Vice President of Canwest Global Communications Corp., as paraphrased by W.A. Dymond and Michael M. Hart, “Abundant Paradox: the Trade and Culture Debate,” paper prepared for Conference on Trade and Culture (Ottawa: Centre for Trade Policy and Law, November 28, 2001), footnote 39.

⁹⁵ Cameron and Tomlin, *The Making of NAFTA*, 173-174.

NAFTA..."⁹⁶ In other words, while the trilateral agreement does contain a chapter on intellectual property (Chapter 17), it falls short of comprehensiveness because of the cultural industries exemption – an outcome that "infuriated" American negotiators.⁹⁷

The ambiguity and debate over the interface between NAFTA's intellectual property provisions and the cultural industries exemption includes two dimensions. Along the first, is whether a right of retaliation exists if Canada enacts measures inconsistent with its intellectual property obligations in NAFTA. Along the second, some critics charge that the cultural exemption offers little protection in the face of explicit commitments on the cultural industries in NAFTA's Chapter 17.

Beginning with the first dimension of debate, existing analyses offer very differing assessments. Some argue that the CIE offers a very high level of protection for the cultural industries. Robert maintains that the NAFTA CIE exempts the cultural industries from all NAFTA obligations not found in the CUSFTA, and moreover, that if Canada enacts measures in the cultural industries inconsistent with these NAFTA commitments, the country's NAFTA partners could not retaliate. "Since NAFTA specifically refers to the FTA, Canada could adopt measures that would depart from the NAFTA obligations, if these obligations are not included in the FTA, without being subject to retaliation by the United States or Mexico."⁹⁸

⁹⁶ Ibid, 47.

⁹⁷ Cameron and Tomlin, *The Making of NAFTA*, 174.

The U.S. General Accounting Office (GAO) offers a similar analysis respecting NAFTA's intellectual property provisions, an issue not found in CUSFTA. The GAO states, "Canada, without violating the agreement, could take broad exemptions from all NAFTA intellectual property obligations relating to cultural industries except those deriving from its adherence to other international agreements."⁹⁹ With respect to retaliation, however, the GAO adopts the opposite position from the above, "...the agreement's automatic retaliation provision should serve effectively to deter the Canadians from implementing any adverse measures affecting the intellectual property rights of the U.S. movie, recording and/or publishing industries."¹⁰⁰

Bernier warrants that it is possible to interpret NAFTA's Annex 2106 as either conferring or not conferring a right of retaliation for measures inconsistent with NAFTA obligations not found in the CUSFTA.¹⁰¹ He states that a "literal" interpretation of Annex 2106 would hold that there is no right of retaliation for these measures. However, he points out that the subject of Annex 2106 is "measures" respecting the cultural industries rather than the cultural industries themselves. The annex states that "measures" respecting the cultural industries and "measures" of equivalent commercial effect shall be governed by CUSFTA provisions. Bernier maintains that a broad interpretation of this annex creates the possibility of the right of retaliation in reaction to

⁹⁸ Robert, *Negotiating NAFTA*, 51.

⁹⁹ United States General Accounting Office, *Report to Congress; North American Free Trade Agreement: Assessment of Major Issues*, vol. 2, GAO/GGD-93-137B (Washington, DC: Government Printing Office, Sept. 1993), 100. As quoted in Robert, *Negotiating NAFTA*, 51-52.

¹⁰⁰ Ibid, as quoted in Bernier, "Les dispositions," 24.

measures inconsistent with any part of NAFTA. "Interprétée plus largement, suivant un raisonnement par analogie, [l'annexe 2106] suggère plutôt que les mesures relatives aux industries culturelles sont exemptées des dispositions de l'ALENA, comme c'est le cas dans l'ALE, et qu'elles peuvent, le cas échéant, faire l'objet de mesures d'effet commercial équivalent, comme c'est le cas encore une fois dans l'ALE."¹⁰²

The jury is clearly still out with respect to the scope of NAFTA's Annex 2106. As Johnson and Schachter note, under the CUSFTA, the United States could not retaliate for policy measures in the cultural industries in issue areas not covered by the CUSFTA – broadcasting, for example, because it is not in Canada's schedule of covered services.¹⁰³ For issues areas not covered in the CUSFTA but covered in NAFTA, meanwhile, determining whether a right of retaliation exists appears to represent a far more complex affair.¹⁰⁴

Along the second dimension of debate, some critics of the NAFTA CIE point to the negotiations on intellectual property, specifically those on copyright, and maintain that these negotiations were effectively negotiations on the cultural industries.

¹⁰¹ Bernier, "Les dispositions," 23-24.

¹⁰² Ibid.

¹⁰³ Jon R. Johnson and Joel A. Schachter, *The Free Trade Agreement: A Comprehensive Guide* (Aurora: Canada Law Book, 1994), 473.

¹⁰⁴ This may in turn be further complicated by the legal framework of NAFTA which operates differently than that of its bilateral counterpart. The point of negotiating departure for NAFTA was that it covered everything that was not explicitly exempted from the agreement, while the CUSFTA covered only those issues explicitly written into the deal (Cameron and Tomlin, *The Making of NAFTA*, 142). As such, determining in

Copyright, as discussed in Chapter 4, is an integral component of the business framework laws for the cultural industries. Despite the Mulroney government's categorical assertions that culture was not on the negotiating table, the NAFTA negotiations on copyright altered Canada's copyright regime (see below), thereby altering one of the crucial elements of the cultural industries' regulatory environment.

Cameron and Tomlin note, "Canada sought to preserve the integrity of the cultural exemption in the FTA by incorporating it into the NAFTA. However, as the intellectual property chapter took shape, it became clear that it covered a wide range of cultural issues."¹⁰⁵ The provisions of NAFTA's Chapter Seventeen on intellectual property affecting the cultural industries are Articles 1701, 1703, 1705 and 1706.¹⁰⁶ Article 1701 outlines the minimal obligations of parties, which are to respect the provisions of four international intellectual property rights conventions, of which two, the Berne and Geneva Conventions, deal with the cultural industries. Article 1703 holds that the principle of national treatment will extend to all forms of intellectual property, including copyright and neighbouring rights, both of which relate to the cultural industries. The national treatment provisions are very clear in this regard, that each Party will accord national treatment to the nationals of all other Parties in regards to protection and respect of intellectual property rights.¹⁰⁷

any particular case whether a measure is inconsistent with the NAFTA and, if it is, whether a right of retaliation exists, may constitute a much more complex process.

¹⁰⁵ Cameron and Tomlin, *The Making of NAFTA*, 142.

¹⁰⁶ This discussion draws largely from Bernier, "Les dispositions," 27-28.

¹⁰⁷ There are two exceptions to this provision, one with limited scope in the realm of sound recording and the other, the cultural industries exemption.

NAFTA addresses copyright directly in Article 1705, with a number of paragraphs that serve to enlarge the scope of copyrightable works and strengthen the protection afforded to copyright holders. For example, the article establishes computer programs and databases as literary works (therefore subject to the provisions of the Berne Convention) and provides that copyright holders must retain exclusive rights to the usage of their works, including the right to authorize or prohibit parallel importation, the communication of the work to the public, and the commercial rental of the protected work. Finally, NAFTA's Article 1706 on sound recordings provides sound recording producers the right to authorize or prohibit parallel importation, first public distribution of the protected work, and commercial rental rights.

Critics argue that the principal effect of NAFTA's copyright provisions is to strengthen the copyright protection afforded to copyright owners; this, they argue, eases American access to the Canadian market and weakens or precludes the ability of the Canadian government to enact initiatives discriminating in favour of domestic expression.¹⁰⁸

The existence of the NAFTA CIE alongside its copyright provisions have led veteran observers to note, "the effect of Canada insulating the cultural industries in NAFTA was more symbolic than real with respect to that agreement's copyright

¹⁰⁸ Roy Davidson, "Intellectual Property," in Duncan Cameron and Mel Watkins, eds., *Canada Under Free Trade* (Toronto: Lorimer, 1993), 215-216.

provisions.”¹⁰⁹ Canada’s Chief Negotiator for the CUSFTA, Simon Reisman, echoes this assessment, expressing the view that the cultural exemption in the CUSFTA and later in NAFTA were “symbolically important but economically irrelevant,” and further, that certain intellectual property provisions were “buried” in NAFTA because Prime Minister Mulroney did not want it to appear that his position had changed since the CUSFTA.¹¹⁰

In light of the debate over the potential for retaliation, the above criticisms seem to presuppose that the United States possesses a right of retaliation if Canada enacts measures inconsistent with NAFTA’s Chapter 17 and/or they assume the Canadian government would not use the cultural industries exemption to shield the sector from these measures.

Indeed, while the CIE arguably exempts the cultural industries from the application of these provisions, NAFTA’s implementing legislation made all of the necessary legislative amendments to bring Canada’s *Copyright Act* into conformity with the Berne and Geneva conventions (NAFTA Article 1701), to modernize certain definitions in the legislation (Article 1705), and to introduce a commercial rental right (Articles 1705 and 1706).¹¹¹ As Bernier notes, the Canadian government’s actions suggest that it has no intention of using the CIE to exempt the cultural industries from

¹⁰⁹ Keith Acheson and Christopher J. Maule, “Canada’s Cultural Exemption: Insulator or Lightning Rod?” (Ottawa: Carleton University, Department of Economics, Carleton Industrial Organization Research Unit, CIORU, Volume 96-01, 1996), 2.

¹¹⁰ Appendix A: The Policymakers’ Roundtable Discussion Session (March 3, 1994), in Emile G. McAnany and Kenton T. Wilkinson, eds., *Mass Media and Free Trade: NAFTA and the Cultural Industries* (Austin: University of Texas Press, 1996), 384, 387.

NAFTA's intellectual property provisions: "...rien dans le comportement actuel du Canada ne donne à croire [que le gouvernement canadien] aurait l'intention, dans un avenir rapproché, de recourir à l'annexe 2106 pour se soustraire à ses engagements prévus au chapitre 17."¹¹²

The Canadian government's negotiation on the cultural industries resulted again in considerable ambiguity respecting the extent of protection afforded the cultural industries under the agreement. The NAFTA CIE, although it addressed domestic demands to exclude the cultural industries from the agreement, also appears to have addressed American pressures to negotiate on the cultural industries, first, by maintaining the retaliation right as in CUSFTA (ambiguity over the scope of retaliation notwithstanding), and second, by negotiating and implementing provisions on copyright pertaining to the cultural industries.

The NAFTA CIE further clouded the waters of debate over the level of protection the exemption provides – or can provide – to the cultural industries. Members of the cultural industries expressed mixed reactions to the negotiation outcomes. Many cultural industries representatives from the SAGIT and the broader cultural community interviewed for the NAFTA period supported the government carrying over the CUSFTA exemption into NAFTA. One SAGIT member said of the CIE, "The proof of the

¹¹¹ Bernier, "Les dispositions," 29.

¹¹² Ibid, 28.

pudding is in the eating. All of those [cultural industries policy measures] are generally still there.”¹¹³

Moreover, as noted previously, when asked why the CCIC disbanded following the NAFTA, one of the group's former members declared, “We won. It wasn't necessary to continue the Committee.”¹¹⁴ Another former member echoed this sentiment, stating that the group wound down because “we got what we wanted.”¹¹⁵ Gordon Ritchie expressed similar satisfaction with the Committee's work at NAFTA to “keep the government on the right track.” “The government did not need a great deal of persuasion. It stuck to its guns in the NAFTA, maintaining the cultural exemption intact.”¹¹⁶ Harold Greenberg, the chair of the CCIC and CEO of Astral Communications, also favourably assessed the newly-minted trade deal, stating that it was a struggle to keep the cultural industries off of the negotiating table and that “it could have been disastrous” if the negotiations had included the cultural sector.¹¹⁷

Others, however, did not share this positive reaction. A number of SAGIT members at NAFTA expressed dissatisfaction with the exemption, pointing primarily to the exemption's retaliatory clause as a major flaw in the approach. One participant, commenting on the “alleged” exemption, characterized the exemption as one of its major

¹¹³ Interview 1332.

¹¹⁴ Interview 1312.

¹¹⁵ Interview 1322.

¹¹⁶ Ritchie, *Wrestling With the Elephant*, 224.

¹¹⁷ As quoted in Ann Gibbon, “Astral Chief Praises NAFTA: Says Wilson Kept Culture Exempt,” *The Globe and Mail*, August 20, 1992, B7.

holes: "The outcome of [CUSFTA] and then continued [after NAFTA] is a climate of self-censorship. [The government has to say] 'what can we do to solve this problem that would not require invoking the cultural exemption?' .. [With the CIE] you have removed from consideration a whole range of policy alternatives."¹¹⁸

Another member post-NAFTA indicated that he "was surprised" that the government "carried forward the exemption as if they hadn't thought about it at all"¹¹⁹ The Directors Guild of Canada, a labour organization representing artists in the audiovisual sector, came out against the agreement, criticizing the cultural exemption as weak and stating that NAFTA's copyright provisions supersede government efforts to protect culture.¹²⁰ The President of the Guild stated: "in principle we remain free to act (on cultural sovereignty). But were we to do so now, we can be subjected to punishing retaliation in any sector the U.S. might choose and without Canada having recourse through any tribunal of arbitration."¹²¹

¹¹⁸ Interview 1329.

¹¹⁹ Interview 1323. This individual described the cultural exemption at CUSFTA as a "stopgap measure" and pointed to US threats of retaliation in other industry sectors and the outcome of the trade disputes over Country Music Television and *Sports Illustrated* as evidence of the limitations of the exemption.

¹²⁰ Canadian Press, "Trade Deal Worries Film, TV Group," *The Calgary Herald*, September 14, 1993, D9.

¹²¹ Ibid.

CONCLUSIONS

Canada entered into trilateral negotiations with the United States and Mexico to create a trade deal encompassing the whole of North America. These trade talks followed rapidly on the heels of Canada's bilateral deal with the US, and for the cultural industries, represented the second time in less than a decade that the sector faced the threat of trade liberalization.

The two-level negotiations surrounding the NAFTA talks resembled their CUSFTA counterparts in many respects as regards the cultural industries. Domestic-level pressure to exclude the sector from the forthcoming agreement continued into the NAFTA period, as did strong pressure from the Americans to negotiate in the cultural sector. A significant difference in this second set of negotiations could be found in the negotiating position of the Canadian government, which held from the outset of the trilateral discussions that culture was "off the table" and that the cultural industries exemption in the CUSFTA was not up for renegotiation in the new round of trade talks.

SAGIT engagement at NAFTA also differed from the CUSFTA period, most notably in the nature of sector-governmental relations, which participants characterized as collaborative rather than conflictual. The consultations at NAFTA did not feature the open conflict between the government and the sector as they did at CUSFTA. The findings respecting this outcome lend strong support to the dissertation's hypotheses that state conduct will shape the nature of sector-governmental relations. In particular,

participant perceptions of government conduct and the policy influence of the group played an important role in accounting for this outcome of participation. Most participants believed the government genuinely sought their input into the negotiations, and many felt that the group could influence policy through its work.

The level and nature of SAGIT members' participation at NAFTA again demonstrated the endogeneity of alternative channels. Cultural industries representatives – including two members of the SAGIT – revived the Canadian Culture/Communications Industries Committee to generate “extra support” for the sector, which they believed could be traded off against other industry sectors in the negotiations.

Reframing processes also exerted an important influence on intrasectoral relations, with trade liberalization constituting a common threat to the cultural industries. This shared threat provided a powerful incentive for SAGIT members to collaborate. Participants felt it was extremely important to develop a unified position for the sector in its advocacy efforts: “We couldn’t go forward with sectoral positions for this to work.”¹²²

Negotiation outcomes at NAFTA received mixed reactions from members of the cultural community. Some welcomed the carry-over of the CIE, while others continued to criticize the exemption as providing an insufficient level of protection to the cultural sector. The ambiguity over the relative scope of protection of the CIE heightened with its

incorporation into NAFTA. The increase in ambiguity pertains primarily to the scope of application of the NAFTA CIE with respect to that agreement's chapter on intellectual property rights. The CUSFTA exemption to which NAFTA's Annex 2106 refers applies to provisions in the former agreement, which does not include an intellectual property chapter.

For some members of the cultural sector, the potential limitations of the cultural industries exemption came to light in the years immediately following the NAFTA. A number of trade challenges – in particular, the dispute over Time Warner's launch of a Canadian edition of *Sports Illustrated* – demonstrated, in the eyes of many cultural industries representatives, the inherent weaknesses of the cultural industries exemption. As the next chapter discusses, the process – and threat – of trade liberalization continued unabated for the cultural sector. The SAGIT began to look for alternatives to the cultural exemption approach.

¹²² Interview 1324.

CHAPTER 7
THE CULTURAL INDUSTRIES SAGIT
AND THE
1999 WORLD TRADE ORGANIZATION MINISTERIAL CONFERENCE

INTRODUCTION

This chapter examines participant engagement in the Cultural Industries SAGIT in the period leading to the Third WTO Ministerial Conference in 1999 in Seattle. One of the most interesting developments in the activity of the Cultural Industries SAGIT in this period was its preparation of a report on Canadian culture in an era of globalization. Resulting from a request of the Minister for International Trade, the SAGIT report examined options for Canada to address the challenges of cultural industries policy-making in the context of the international trading regime. This chapter analyses participant engagement in the SAGIT process in this time period, as well as the report the SAGIT submitted to the Minister for International Trade, a version of which the government released publicly. As the analysis shows, state behaviour – particularly with respect to membership selection and perceptions of policy influence of the group – continued to play a vital role in the level and nature of participant engagement in the process. Reframing processes also exerted important influences on SAGIT members' involvement in the consultations, while alternative channels did not tend to condition engagement in this period.

The chapter proceeds in three sections. The first examines the place of the cultural industries in the multilateral trading regime. In contrast to Chapters 5 and 6,

which focused on the cultural industries at the bilateral (Canada-US) and continental (North American) levels, this chapter addresses the cultural industries in the international trading regime. Section one provides an overview of the cultural industries in international trade agreements, delineating both the rules and politics for the cultural industries at the global level. Section two, as in the two preceding chapters, analyses participant engagement in the SAGIT process, investigating the role of the state, alternative channels and reframing processes. As with previous chapters, the timeline in Appendix B summarizes the main SAGIT milestones, trade negotiations and trade disputes to occur in this consultative period.

The final portion of the chapter describes the key developments in the multilateral trading regime following the Third Ministerial Conference, in particular the Canadian government's adoption of the SAGIT's recommendation to pursue a New International Instrument on Cultural Diversity (NIICD). Like the discussion of outcomes in the two preceding chapters, considerable ambiguity surrounds the NIICD. In contrast to the negotiation outcomes of the CUSFTA and NAFTA (the Cultural Industries Exemption), the ambiguity surrounding the NIICD revolves not only around the extent to which it will or will not protect cultural industries policy, but also around the prospects of successfully negotiating such an instrument to begin with. As discussed in the final chapter of the dissertation, this feature of the NIICD is likely to play a crucial role in participant engagement in the SAGIT process in the years to come.

THE CULTURAL INDUSTRIES IN THE MULTILATERAL TRADING REGIME¹

This section sets the stage for the discussion that follows of SAGIT members' engagement in the consultation process. As the investigation reveals, at the multilateral level, Canada faces some of the same challenges as it does at the bilateral and continental levels respecting trade liberalization and the cultural industries. At the global level, the United States remains committed to liberalized trade in the cultural industries, while Canada still seeks to insulate the cultural sector from trade liberalization. One of the main factors distinguishing multilateral from bilateral or continental negotiations on the cultural industries, however, is that Canada has traditionally been one of a *group* of countries, most notably a number of European countries, seeking differential treatment for the cultural industries. Thus, a multilateral forum presents opportunities for Canada to align with other like-minded countries in multilateral negotiations regarding cultural goods and services.

This section proceeds in two parts. The first examines the main components of the multilateral trading regime affecting the cultural industries, and highlights some of the key political economic dynamics at the multilateral level in trade negotiations affecting the cultural industries. The second section focuses more closely on Canada and

¹ This section draws primarily on Ivan Bernier, "Cultural Goods and Services in International Trade Law," in Dennis Browne, ed., *The Culture/Trade Quandary: Canada's Policy Options* (Ottawa: Centre for Trade Policy and Law, 1998), 108-148 and W.A. Dymond and Michael M. Hart, "Abundant Paradox: the Trade and Culture Debate," paper prepared for Conference on Trade and Culture (Ottawa: Centre for Trade Policy and Law, November 28, 2001). A full discussion of the intricacies of each of these agreements as they relate to the cultural industries is beyond the scope of this chapter. Interested readers can consult these references.

analyses the interface between the multilateral rules governing cultural trade and Canada's cultural industries policies.

Overview of the Main Agreements

The treatment of the cultural industries in international trade law differs depending on whether the item is a cultural good or service. As with other goods and services, the General Agreement on Tariffs and Trade of 1994 (GATT 1994) deals with cultural goods, while the General Agreement on Trade in Services (GATS) covers cultural services. The other primary multilateral agreements regulating trade in the cultural industries are the WTO Agreement on Trade Related Investment Measures (TRIMS) which applies to goods, and the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS).² This section examines these four agreements in turn, focusing on the key provisions of each that impact the cultural industries. As the discussion below demonstrates, for some cultural items, it is not always clear whether the item is a cultural good or a cultural service. GATT 1994, for example, includes provisions for cinema, generally regarded as a cultural service.

² While a number of other agreements are relevant in principle to the cultural industries, this chapter focuses on the main agreements impacting the sector. Additional agreements that in principle may affect the cultural industries include the OECD Agreement on Invisibles, the WTO Agreement on Safeguards, and the WTO Antidumping Agreement. Another potentially relevant agreement is the WTO Agreement on Subsidies and Countervailing Measures (ASCM). This chapter's discussion of subsidies under GATT 1994 incorporates a brief discussion of the ASCM. With respect to the relevant articles of the last three of these Agreements, Dymond and Hart note, "Historically, none of these articles has played any significant role in the governance of international trade in cultural goods." (Dymond and Hart, "Abundant Paradox," 13). Interested readers can consult this portion of Dymond and Hart's paper, or for a more detailed analysis of the potential

Nonetheless, it is crucial to distinguish between the treatment of cultural items as goods versus services as the disciplines differ as between the two. This played a key role in the bilateral trade dispute analysed further on in this chapter between Canada and the United States over *Sports Illustrated*. One of the key elements of this case related revolved around a periodical simultaneously embodying aspects of a good (the physical magazine) and a service (the sale of advertising services on the magazine's pages). The WTO Panel ruled that for purposes of the international trading regime a magazine is a good, and therefore subject to the disciplines of GATT 1994, rather than the GATS. This determination boded ill for Canada, as the country has made no commitments respecting the cultural industries under the GATS, and would therefore have preferred the case be decided under the rules of the agreement on services.

Many cultural items share this property of embodying characteristics of both goods and services. Film reels and compact disks, for example, are physical goods used as recording mediums for cultural services (movies, sound recordings, music videos, etc). Given the distinction in the international trading regime between rules for goods versus services, the determination of whether (or what aspects of) a cultural item constitutes a good or a service becomes a key consideration in international trade in the cultural industries. But as Dymond and Hart note, "there is no agreed international definition of the distinction between goods and services, and conflicting interpretations have already

implications of these agreements for the cultural industries, Ivan Bernier, "Cultural Goods and Services," 108-148.

arisen, most notably in the WTO [*Sports Illustrated*] case on split-run magazines.”³ This chapter’s discussion of the *Sports Illustrated* case demonstrates some of the implications of this definitional debate.

Multilateral Agreements Regulating Trade in Cultural Goods

GATT 1994. The key provisions of GATT 1994 affecting the cultural industries are those on most favoured nation treatment, national treatment, tariffs, quotas, and subsidies.⁴ Most favoured nation treatment (GATT Article I), as discussed in Chapter 4, prohibits nations from applying discriminatory measures affecting trade in goods between WTO members. While there are a number of exceptions to the MFN treatment rule, a notable exception is GATT Article XXIV, which provides that WTO members may accord preferential treatment to other countries as part of a regional trade agreement, such as the CUSFTA or NAFTA.

National treatment (GATT Article III), also discussed in Chapter Four, generally disallows the use of discriminatory measures in a WTO member’s domestic market between domestic and imported goods. Exceptions to the national treatment rule relevant to the cultural sector are Article III:8 that excepts subsidies and government procurement from national treatment and Article III:10 that excepts screen quotas (domestic content requirements for exhibition in the film sector).

³ Dymond and Hart, “Abundant Paradox,” 14.

⁴ Ibid, 12.

The tariff rule found in GATT Article II prohibits WTO members from applying tariffs at rates higher than those in the member's schedule listing (the list of goods on which the member has undertaken tariff rate obligations). The quota rule (Article XI) prohibits any manner of import or export restriction on any product. Finally, with respect to subsidies, GATT Article XVI and the WTO Agreement on Subsidies and Countervailing Measures, prohibit export subsidies, i.e., subsidies conditional on export of the product, and subsidies conditional on the recipient using domestic over imported goods.

The main exception for the cultural industries in GATT 1994 is Article IV. This article, dating to the negotiations leading to the original GATT of 1947, responded to European demands to maintain screen quotas. It exceptionally authorizes contracting parties (now WTO Members) to maintain and enact screen time quotas for cinematographic films. Article IV also recognizes the specificity of cultural products, although it does not subtract them from the disciplines of the agreement. The recognition of specificity is akin to a cultural industries exemption, but offers less potential protection for cultural policy measures that would otherwise be inconsistent with the GATT. In legal terms the scope of specificity is narrower than the scope of a cultural exemption.

TRIMS. The WTO Agreement on Trade Related Investment Measures governs trade in goods and deals with national treatment provisions for foreign investment. TRIMS prohibits national governments from requiring foreign investors to meet

conditions in order to invest in the country, including measures requiring foreign investors to purchase or use domestic over foreign products. This could have ramifications in the cultural sector, for example, if the federal government through the *Investment Canada Act* imposed Canadian content requirements as a condition of foreign investment in the cultural goods sector.

Multilateral Agreements Regulating Trade in Cultural Services

GATS. In comparison to negotiations on multilateral trade in goods, multilateral negotiations on trade in services, resulting in the GATS, took place in recent years during the Uruguay Round of multilateral trade negotiations (1986-1994). While based on similar concepts to its goods counterpart, e.g., national treatment and most favoured nation treatment, the GATS' point of negotiating departure differs markedly from GATT negotiations. In GATS negotiations, WTO members' negotiate on a positive rather than a negative basis, deciding the sectors for which they will make market access commitments and for which they will extend rights of national treatment to other members, rather than negotiating exceptions to national treatment and market access as in the GATT.

Moreover, under the GATS, WTO members can decide not only the services on which they will undertake obligations but can also determine the conditions respecting those obligations. "The most important [difference between the GATS and the GATT] is that the commitments of members respecting access to import markets and the right to

national treatment are confined to those service sectors listed in a member's schedule. Even then, members may circumscribe any such commitments with a range of conditions."⁵ In addition, countries can take exceptions to the MFN rule and there are no specific obligations regarding subsidies (although in the case of the latter, GATS Article XV recognizes that subsidies can have a distorting effect on trade and requests that members negotiate to develop rules to avoid such distortions).

A number of parties to the GATS negotiations attempted without success to secure special treatment for the cultural sector.⁶ Early in the negotiations, Canada sought to include a cultural exemption clause, but the country failed for lack of support from other negotiating countries. Then, in 1993, shortly before the conclusion of the negotiations, numerous artists across Europe began to demand that the issue of culture in services trade be addressed in the negotiations. In response, the European Economic Community (EEC, precursor to the European Union), attempted to secure a cultural specificity clause for audiovisual services. The EEC also failed to secure adequate support for the proposal, partly because it sought the specificity clause so late in the negotiations.

In the absence of a cultural exemption or cultural specificity clause, countries seeking to support their cultural sectors undertook no obligations respecting cultural services. Canada, for its part, made no commitments respecting national treatment or

⁵ Ibid, 14.

⁶ Bernier, "Cultural Goods and Services," 109.

market access for cultural services, and excluded musical scores, audio and video recordings, books, magazines, newspapers, journals and periodicals from its commitments on the wholesale trade services sector. Canada also exempted its film and co-production agreements from MFN disciplines.⁷ In addition, in the Telecommunications Annex of the GATS, Canada excepted measures affecting cable or broadcast distribution of radio and television programs.

TRIPS. The Agreement on Trade Related Aspects of Intellectual Property Rights combines the obligations of the Berne Convention on literary and artistic works, the Geneva Convention on phonograms, the Rome Convention on neighbouring rights, and the Paris Convention on industrial property. WTO members undertake to meet the national treatment requirements of the above-noted conventions, including the exceptions to national treatment therein. One of TRIPS' noteworthy aspects relating to the cultural industries is Article 9, that requires compliance with the Berne Convention, but excepts moral rights from the agreement. This feature of the TRIPS resulted because the United States does not recognize moral rights (and until 1989 was not a signatory to the Berne Convention).

Canada's Cultural Industries Policies and the Multilateral Trading Regime

In the period preceding the CUSFTA, Canada's principal policy instruments – direct expenditures and tax expenditures, and regulation through Canadian content and restrictions on foreign ownership and control – did not conflict with the country's GATT

⁷ In principle, MFN exemptions are not to exceed 10 years.

obligations.⁸ Because the multilateral rules at this time applied only to goods, policy measures for cultural industries in the service sector such as broadcasting, lay beyond the confines of the agreement. In addition, Canada had not undertaken any obligations reducing its capacity to enact or maintain measures restricting or discriminating against foreign investment.

As discussed in the two preceding chapters, there are diverging opinions regarding the extent to which the cultural industries exemption protects the sector. This divergence also characterizes opinions respecting the conformity and/or vulnerability of Canada's cultural industries policy measures in the multilateral trading regime.

With respect to subsidies, for example, Dymond and Hart doubt that current Canadian subsidization practices would lead to trade disputes in the cultural sector unless the Canadian government enacted export subsidies. They assert: "it is highly unlikely given the economic characteristics of the cultural sector, that the current [WTO subsidy] rules would give rise to serious disputes unless the government were to grant explicit export subsidies."⁹

⁸ Dymond and Hart, "Abundant Paradox," 4. Dymond and Hart note that Canada's 1960s import prohibition on split-run magazines arguably ran contrary to the country's international trade obligations, but no country challenged the measure until the *Sports Illustrated* case, discussed further on in this chapter.

⁹ Ibid, 13. Dymond and Hart do not elaborate on the "economic characteristics" of the cultural sector to which they refer.

In contrast, Bernier maintains that subsidies to the cultural industries may lead to trade disputes. In assessing the potential for cultural industries subsidies to run counter to the WTO Agreement on Subsidies and Countervailing Measures, he contends: "The possibility of subsidized cultural goods being challenged under this agreement is not to be dismissed. ... The fact is that cultural goods in many countries benefit from a wide variety of subsidy programs."¹⁰ He notes in this regard the particular vulnerability of subsidies in the film sector because they can be quite substantial in monetary terms and usually flow to a limited number of producers, "which makes it all the more important to determine whether films are goods or services as there are no constraints as yet on subsidies in the Service Agreement."¹¹

Disagreements as to the *potential* frictions between Canada's cultural industries policy measures and its multilateral trading commitments are arguably overshadowed by discussions of *actual* frictions between domestic policy and multilateral commitments. The most widely discussed of these actual frictions were those pertaining to the trade challenge involving *Sports Illustrated Canada*. As described below, for many in the cultural sector, this trade dispute vividly demonstrated that Canada's cultural industries exemption in CUSFTA and NAFTA provides insufficient protection for the sector in light of the country's multilateral trade agreements. SAGIT members decided that they needed to rethink Canada's approach to the cultural industries in trade.

¹⁰ Bernier, "Cultural Goods and Services," 119.

¹¹ Ibid.

PARTICIPANT ENGAGEMENT IN THE SAGIT PROCESS

In the years following the conclusion of the Uruguay Round (1994) and the entry into force of the NAFTA (1994), the SAGIT did not advise on the negotiation of a particular trade agreement, but rather, worked on a more general basis on the topic of the cultural industries in trade.¹² During this period the topic generated considerable interest for those in the cultural community, those in the Canadian government and members of the Canadian public, as a number of high profile cultural trade disputes took place (described in Chapter 4 and in the section below on reframing processes). Following a Ministerial request for advice from the SAGIT as to how Canada should address the cultural industries in a global trading environment, the SAGIT worked for over two years on a report to the government on this matter. In early 1999, the SAGIT publicly released its report on Canadian culture in a global world, which then fed into the government's preparations for the 1999 World Trade Organization Ministerial Conference in Seattle.

This section describes the level and nature of SAGIT members' engagement in the consultation process leading up to the public release of the group's report, and analyses the role of the state, alternative channels, and reframing processes in accounting for the level and nature of participation in this third consultative period. As readers will recall, this dissertation hypothesizes that state behaviour and alternative channels play an important explanatory role vis à vis the level of participant engagement in a consultation. The study proposes that participants will tend to display active engagement levels where

they find state behaviour favours their interests (irrespective of the existence of alternative channels). However, when participants believe state conduct adversely affects their interests, alternative channels will exert a strong influence on their engagement level. If they perceive there are more (few) promising alternative forums for interest representation, they will tend to disengage from (actively engage in) the consultation. Consultation members may engage passively in proceedings for strategic or other purposes.

With respect to the *nature of engagement*, the dissertation hypothesizes that where reframing processes pose threats or generate opportunities for participants in a consultation, the group will be more apt to display intrasectoral collaboration (intrasectoral conflict) if the threat/opportunity aligns (uncouples) their policy interests. The presence of passively engaged participants can permit for greater intrasectoral collaboration if it decreases intrasectoral conflict.

Chapter 2 further theorized that state behaviour will tend to influence the nature of engagement between the sector and the government. If consultation members believe that state conduct compromises (further) their interests, sector-governmental relations will tend toward conflict (collaboration). Passively engaged participants may facilitate collaboration between the sector and the government if they choose not to actively conflict with the government.

¹² As in Chapters 5 and 6, this section reports on the findings of personal interviews with SAGIT participants, public officials involved with the SAGITs, and members of the

Throughout this final consultation period, the vast majority of SAGIT members displayed active levels of engagement, and the group exhibited collaborative dynamics at both the intrasectoral and sector-governmental levels. Chapter 2 hypothesized that a deliberative consultation would exhibit this form of engagement where participants perceive state conduct as favourable to their interests (F) and in the presence of reframing processes aligning their interests (A). The dissertation further proposed that alternative channels would not play a central role under these circumstances (i.e., there could be many or few alternative channels), because participants would actively engage and collaborate with the government regardless of the number of alternative channels since state behaviour favoured their interests.

The empirical findings in this third study period lend support to the dissertation's hypotheses. As described in the following sections, almost all participants held a favourable impression of the role of the government in the consultations, and interviews indicated that their active engagement resulted largely from these positive perceptions. As such, in contrast to the CUSFTA and NAFTA periods, alternative channels do not appear to have played a significant role in accounting for participant involvement in the group. Moreover, the intensity of reframing processes in this consultation period, notably a number of high profile cultural trade disputes, stimulated collaboration among SAGIT members.

The experience of the SAGIT at this period points again to the importance of membership selection to the functioning of the group. As the following pages describe, the character of the SAGIT membership post-NAFTA changed substantially, consisting to a much greater extent of large publicly traded companies in the communications sector, and foregoing entirely the appointment of creative interests to the group. Consultation outcomes at this period also demonstrate the role that passively engaged participants can play in generating intrasectoral collaboration. SAGIT members in this period that engaged passively in the consultations by not voicing opposition to the group's deliberations appear to have indirectly facilitated collaboration at the intrasectoral level.

Level of Engagement

Overall, SAGIT members interviewed for this study indicated that they engaged actively in the consultation. Only one participant indicated that he engaged passively and only one individual disengaged from the process entirely. Two members stated that the Cultural Industries SAGIT was the most active of all of the SAGITs in terms of the frequency of its meetings, its output, and the "aggressiveness" with which the group pursued its agenda within the government.¹³ Many members indicated that the drafting of the SAGIT report constituted a major focus of the group's efforts. They indicated that meetings took place on an as needed basis, with the group convening on average once every three months. Participants also used conference calls and task groups to undertake SAGIT activities.

Overall, participants spoke positively of their involvement with the SAGIT. They stated they were flattered to be invited, that it was a privilege to be involved, that they found the consultation an interesting and useful experience, and that they and their fellow members of the SAGIT were knowledgeable, committed, highly engaged in the issues, and genuinely trying to advise the government.¹⁴

A core group of participants took a lead role in drafting the report of the group, and the other members of the SAGIT reviewed and commented on the document as it proceeded through various drafts. One participant who stated that he had personally drafted and fine-tuned significant portions of the document, remarked on the relative lack of trade expertise of some of the other members of the SAGIT, stating that “none of them are trade people so they grasp upon ideas like manna from heaven.”¹⁵ This individual indicated that he tried “in good faith” to develop ideas for the group. The other participants indicated that although they did not take a direct role in writing the report, they commented on various drafts of the document, attended many SAGIT meetings, partook actively in the group’s deliberations, and spent a considerable amount of time on the consultation.

A number of participants pointed to the trade dispute over *Sports Illustrated Canada* (discussed in the section on reframing processes), and believed that this case was of great importance to members of the cultural community because it demonstrated the

¹³ Interviews 1311 and 1323.

¹⁴ Comments from interviews 1311, 1321, 1323, 1326, 1333 and 1335.

limitations of the cultural industries exemption.¹⁶ These members perceived that the outcomes of this trade dispute compromised Canada's cultural policy-making capacity, and as discussed below, this threat contributed materially to the collaboration exhibited by the group. For one participant, part of the rationale for participating pertained to the indirect benefits of involvement with the SAGIT: the member represented a firm that could generate business as a result of his networking within the industry and with government via the consultations.¹⁷

Only one participant displayed passive levels of engagement. This individual indicated that he had a direct stake in the deliberations of the group and vehemently opposed the recommendations of the SAGIT report, but chose not to share these views with the other members of the SAGIT, noting, "I didn't feel I had the votes or the expertise."¹⁸ This member felt that because he did not represent a large firm and because he was not a specialist in trade law, he had only a limited capacity to criticize the report, which he described as "an exercise in wish fulfillment."¹⁹ But despite this disagreement with the recommendations in the SAGIT report, the individual continued to engage in the consultations to ensure that the views of the subsector he represented would be taken into account by the SAGIT. In a similar manner to the "negative blocker" rationale of the passively engaged SAGIT participant at NAFTA (discussed in the previous chapter), this

¹⁵ Interview 1311.

¹⁶ Interviews 1317, 1321, 1323, and 1335. The latter two of these participants also mentioned the trade challenge involving Country Music Television as an important event highlighting the need for a new approach to the cultural industries in trade.

¹⁷ Interview 1311.

¹⁸ Interview 1321.

participant chose to remain engaged -- albeit passively -- to ensure the interests of his sector would be represented in the consultations. For this individual, the negative block was not so much directed at other SAGIT members, but more so at the government, who he felt tended not to seek adequate input from his industry segment.

Only one participant indicated he disengaged from the consultation. This individual indicated that the government appointed him to the SAGIT without providing sufficient orientation as to the objectives or functioning of the group. Despite possessing considerable expertise respecting the cultural industries in trade, this individual stated that he discontinued attending SAGIT meetings shortly after his appointment because he did not understand the "modus operandi" of the group.²⁰

The coming sections examine more fully the role of the state, alternative channels and reframing processes in accounting for the level of engagement in this consultation period. The following segment now turns to the nature of participant engagement.

Nature of Engagement

The SAGIT displayed both intrasectoral and sector-governmental collaboration in this period of its existence. Intrasectorally, members stated that they collaborated to

¹⁹ Subsequent sections of this chapter discuss the recommendations of the SAGIT report.

²⁰ Interview 1310. One other SAGIT member resigned from the group following the release of the report, feeling he had done as much as he could and had spent enough time in the consultation, having sat for several years on the SAGIT. This member also felt that his lack of trade expertise hampered the extent to which he could contribute to the work of the SAGIT. (Interview 1321).

author a report recommending means for the government to address culture in trade, and sector-governmentally, they indicated that the group maintained collaborative relations with the government, working with both Ministerial and public officials to draft and publicly release the report.

At the intrasectoral level, as discussed above, a core group of SAGIT members collaborated extensively to draft the report, and when this group presented the document to the rest of the SAGIT, all study participants noted that the draft received consensus support from SAGIT members. All participants described relations between SAGIT members as collaborative and consensual, indicating that although members disagreed over the best means of shielding cultural industries policy from the disciplines of the international trading regime, there was virtually unanimous agreement that the cultural industries merited special treatment.²¹

One participant surmised that more conflict and disagreement may have taken place among those members drafting the report, but indicated that when this group presented the document to the plenary SAGIT, SAGIT members readily supported and adopted it.²² No members publicly dissented from the report. Indeed, the report lists the full membership of the SAGIT among its first few pages, which suggests that no SAGIT members held large enough reservations about the report to refuse to associate their name with the document. Indeed, as noted herein, only one study participant indicated that he

²¹ Two participants noted that there was only one SAGIT member who actively opposed these views (Interviews 1311 and 1326).

disagreed with the substance of the report, but chose not to voice his opposition, believing that he did not represent a large enough firm or possess sufficient expertise to credibly counter the prevailing views of the group.²³

When asked about the representativeness of the membership of the SAGIT, in contrast to the previous two chapters, where all SAGIT members remarked on the diversity of the group, in this consultation period, four SAGIT members expressed little support for the idea that the SAGIT represented the breadth and diversity of the cultural industries.²⁴ Three of these individuals pointed to the presence of numerous members representing large communications firms, particularly companies involved in film and television production. They felt that this privileged the voice of large corporations over small firms, communications companies over other industry segments such as sound recording or publishing, and that it reflected a federal government focus on the audiovisual sector as a priority cultural industry.

While one of these participants noted that much of the “noise” in international trade negotiations pertains to the audiovisual sector, this individual nonetheless felt that the government’s membership choices under-represented other industry sectors and over-represented large central Canadian firms. The fourth participant echoed this point about the lack of representation of some industry subsectors, noting that the federal government generally under-represents content providers and creators in consultation processes.

²² Interview 1321.

²³ Ibid.

Despite the above-noted opinions, other members believed that the SAGIT did represent a “whole raft” of the cultural industries sectors, pointing out that the group’s membership ranged from the film, television, and publishing sectors to the visual arts sector.²⁵ One member noted that these diverse sectors would be unlikely to come into contact with one another if it weren’t for the SAGIT. In the words of this member, “[Before their appointment to the SAGIT], they don’t know each other, they don’t talk to each other, they don’t know the economics of each others’ businesses.”²⁶

Interestingly, a SAGIT member from the CUSFTA period, when shown the list of SAGIT members from this third period, expressed surprise that the Canadian Conference of the Arts (CCA) was not an “ex officio member” of the group.²⁷ When comparing SAGIT members from CUSFTA to this latter period, the individual commented that the more recent membership slate represented a much more “institutionalized” group of people. In this person’s view, the more recent members possessed greater expertise, both in the industry but also in government (a number of SAGIT members in the late 1990s

²⁴ Interviews 1313, 1317, 1323, and 1326.

²⁵ Interviews 1311, 1323, 1333, and 1335.

²⁶ Interview 1311.

²⁷ The CCA has a mandate of “ensuring the lively existence and continued vitality and growth of the arts and creative industries in Canada,” (Canadian Conference of the Arts, Policies and Procedures Guidelines, Fourth Edition, July 2002. Accessed on-line at <http://www.ccarts.ca/eng/04res/P&P.html#mandate> August 13, 2002). The organization was represented on the SAGIT at the time of the CUSFTA negotiations. When asked about the absence of the CCA from the SAGIT in this latter period, one of the SAGIT members serving in this latter period noted that the CCA deals with domestic issues and matters of “the arts” rather than popular culture, and because “Hollywood doesn’t care about instruments for support of fine arts,” the CCA does not require a seat at the SAGIT table (Interview 1311).

possessed considerable experience with government), and represented larger industrial concerns. Moreover, this participant noted that the change in name from the Arts and Cultural Industries SAGIT to the Cultural Industries SAGIT reflected a change to a more industrial focus of the group. The following section on the role of the state discusses the change in name of the group, as well as the differences in its representational characteristics from the previous two consultative periods.

In addition to the group's collaborative internal relations, it also maintained collaborative relations with the government. None of the participants recounted instances of discord comparable to the CUSFTA period where "tantrums," heated discussions, and "banging" government officials appeared to dominate sector-governmental relations. Moreover, these more recent SAGIT members did not seem to experience the frustration of some of their CUSFTA and NAFTA counterparts in their relations with DFAIT officials.²⁸

Rather, virtually all SAGIT members spoke positively of the relations between the group and the government. One member characterized DFAIT officials as focused on international trade negotiations and the Department of Canadian Heritage (DCH) as "giving them their instructions" respecting negotiations in the cultural industries.²⁹ This

²⁸ Only one SAGIT member in this period spoke negatively of relations between the SAGIT and the government, indicating that public officials at DFAIT routinely attempted to block the group's access to the Minister for International Trade and frequently did not keep the SAGIT apprised of relevant developments in trade negotiations (Interview 1333).

²⁹ Interview 1311.

participant further noted that in instances where DFAIT proposed candidates for the SAGIT that the membership deemed undesirable (e.g., appointing representatives from foreign multinational corporations), the SAGIT was able to act to avoid these appointments. Participants also stated that both DFAIT and DCH assisted the work of the SAGIT by seconding strong writers to the group to assist with drafting documents.

A good example of collaborative relations pertained to the public release of the SAGIT's report. Because SAGIT members serve at the pleasure of the Minister for International Trade and provide confidential advice in this capacity, the group could not release its report without prior approval from the Minister. When the SAGIT sought this authorization, the government agreed, provided it could revise the report to ensure its suitability for public release. Specifically, the government reviewed the report with an eye to Canada's diplomatic relations with the United States -- the revisions pertained predominantly to portions of the report the government felt might "antagonize the Americans."³⁰ SAGIT members, cognizant of the broader political economic and diplomatic considerations at play for the federal government, worked collaboratively with government officials to generate a version of the report that would be suitable from both the SAGIT's and the government's perspectives.

Assessment of the Working Hypotheses

As discussed above, prior to the Third WTO Ministerial Conference, the Cultural Industries SAGIT exhibited active levels of engagement and collaborative dynamics

across both intrasectoral and sector-governmental lines. The shaded portions of Figure 9 on the following page illustrate these consultation outcomes and their associated hypotheses. As the figure shows, the dissertation hypothesised that these outcomes would obtain where state behaviour is favourable to participant interests (F) and where reframing processes serve to align participant interests (A). Further, the theoretical framework of Chapter 2 proposed that under circumstances of favourable state behaviour, consultation participants would actively engage irrespective of the number of alternative channels (M or F). The paragraphs below describe the degree to which the findings in this third consultation period bear out these hypotheses. The analysis reveals that the empirical findings of this chapter lend support to the theoretical propositions of the dissertation.

Role of the State

Government decisions played an important role in participant engagement in the Cultural Industries SAGIT in this third consultative period. Decisions respecting membership and participant perceptions of the degree of policy influence of the group strongly impacted SAGIT members' involvement in the consultations. The relative homogeneity of the members (in terms of the industries they represented and their interests) as well as members' perceptions that the group possessed a relatively high

³⁰ Ibid.

Figure 9: Consultation Outcomes prior to the Third WTO Ministerial

degree of policy influence generated high levels of engagement and contributed to the collaborative relations between group members and the government.

Membership. SAGIT members directly and indirectly attributed considerable importance to membership selection in the level and nature of participant engagement in the group. When asked why they believed the government appointed them to the SAGIT, some felt their expertise or knowledge accounted for their appointment while most attributed their appointment to the region or sector they represented, or to their reputation as a cultural nationalist.³¹

Members with specialized expertise in cultural industries trade and members with direct corporate and personal interests in cultural industries policy and trade noted that these factors prompted them to engage actively in the consultations.³² In the case of the former, they engaged actively because they believed they could generate ideas that would be useful to the government and to the sector, and in the case of the latter, they engaged actively because the interests at issue affected their businesses directly. One member noted that many of the business leaders appointed to the group were “longstanding

³¹ Only one participant did not know what accounted for his appointment to the group (this individual possessed considerable expertise in the field of cultural industries and trade but was unsure why the government selected him for appointment).

³² Interviews 1311 and 1317, 1321, 1323, 1326, 1333, and 1335.

cultural nationalists” with a history of active engagement in the issue area.³³ One participant indicated that trade issues affected his sector only tangentially at the time of his SAGIT participation, but stated that he engaged actively as a representative a particular region of the country.³⁴

As noted previously, only one participant adopted a passive stance in the consultations.³⁵ This individual’s decision to engage passively pertained to the membership slate of the group. As a member who felt he lacked sufficient trade expertise and/or the industry or company size to credibly voice opposition to the specialists and large communications firms on the group, this SAGIT participant tended not to voice his views in the consultations. In particular, this member was extremely disdainful of the SAGIT’s report, but did not feel he had the trade expertise or the votes (i.e., firm size, industry size, and sector priority of the government) to share his views with the SAGIT.³⁶

Despite disagreeing with the SAGIT’s advice to the government, this member continued to participate in the consultations because he wanted to ensure that the interests of his sector would be taken into account. As such, the choice to passively engage rather than disengage related to the participant’s belief that the membership of the group bore inimically on his interests. This individual continued to participate passively, describing

³³ Interview 1323.

³⁴ Interview 1313.

³⁵ Interview 1321.

³⁶ The following section examines in greater detail the content of the SAGIT report.

the choice as a “defensive” strategy to ensure that the group’s deliberations took into account his subsectoral interests.

The following paragraphs on the nature of engagement return to the capacity for passive engagement levels to mute active conflict in consultations, thereby facilitating collaborative relations at the intrasectoral and sector-governmental levels.

The membership of the group also influenced the nature of engagement. As shown in Table 17 on the following page, of the sixteen SAGIT members, more than half (nine members) were either specialists or representatives from communications enterprises. The specialist group included lawyers, consultants and academics with significant expertise in the cultural industries and trade while the representatives from communications firms were either the heads of their corporations or senior executives from major corporate divisions (the communications companies represented on the SAGIT were among the largest firms in the industry). The majority of this group hailed from Central Canada. Representatives from smaller non-communications firms tended to operate in regions outside Central Canada, with, for example, members from the publishing, multimedia, and visual arts sectors coming from Western Canada, and one of the film representatives hailing from the eastern part of the country.

Table 17:
Third WTO Ministerial Conference Cultural Industries SAGIT – Membership Distribution

Creative Interests	Specialists	Industry Subsectors					
		Communications	Film & TV	Sound recording	Print Media	Visual Arts	Multi-media
0	4	5	2	2	1	1	1

This pattern of appointments differed from the CUSFTA and NAFTA periods, where the membership was more broadly representative of the cultural industries and included fewer or no specialists in trade policy and the cultural sector.

Moreover, the government made another significant break with previous appointment patterns in the period leading up to the Seattle Ministerial. The Minister for International Trade did not appoint any creative interests to the SAGIT. That is, there were no arts practitioners represented on the group. As noted in Chapters 5 and 6, the CUSFTA and NAFTA SAGIT membership included practicing artists. This character of the groups prompted one of the SAGIT members appointed post-NAFTA (as well as one individual interviewed for this study who did not sit on the SAGIT at the time of the CUSFTA negotiations) to describe the government's choice of SAGIT members prior to NAFTA as "strange."³⁷ In particular, as noted previously, these study participants stated that the Arts and Cultural Industries SAGIT in the pre-NAFTA period was more political than its non-cultural industries counterparts, containing high profile political figures ideologically opposed to free trade.

One of the SAGIT members interviewed for this study described the functioning of the SAGIT prior to NAFTA as “ineffective” owing to the presence of nationalist artists “ideologically opposed” to free trade. This individual indicated that following NAFTA the government decided to “redo” the SAGIT, moving its membership slate away from those “on the left-hand side of the political spectrum” to large publicly-traded companies with many employees.³⁸ In the view of this individual, these large corporate members would be accustomed to working with trade policy specialists like lawyers and economists and the group would be in a better position to function effectively. At this time, the government also changed the name of the SAGIT from the Arts and Cultural Industries SAGIT to the Cultural Industries SAGIT, reflecting the sharpened industrial focus of the group and the declining emphasis on creative interests and the arts.

In sum, the government’s membership criteria differed between the first two consultative periods and the third. The appointment of high profile political figures played a greater role in the first two periods, while in the latter phase, the government appears to have placed greater emphasis on industrial representation and expertise. While one SAGIT member noted that the Minister is always lobbied by those seeking membership on the group, he stated that the Minister aims to select a group of people that

³⁷ Interviews 1311 and 1322.

³⁸ Interview 1311.

he hopes will be able to provide advice to the government, and bases renewal of member terms on the extent to which participants contribute to the work of the group.³⁹

Another participant described the process of membership selection as “open,” and indicated that organizations or firms can request representation on the SAGIT: “The only requirement for being on [the SAGIT] is that you have a particular [corporate] interest and a trade focus.”⁴⁰ The Minister has renewed the terms of a number of active SAGIT members many times over, which confers a degree of continuity to the work of the group.

The SAGIT also possessed influence in the membership selection process. One participant noted that on occasion DFAIT officials with limited experience in the cultural industries sector would suggest “inappropriate” membership appointments, e.g., representatives from American multinational corporations. Where this happens, SAGIT members possessed sufficient influence in the membership selection process to ensure that these individuals did not receive appointments. Every company on the SAGIT is represented by Canadians or Canadian interests and foreign firms operating in Canada do not receive appointments to the SAGIT. In this third consultative period, only one SAGIT member represented an organization serving both Canadian and American interests. As discussed in the section on policy influence below, this character of the membership reflects the government’s stated objectives for the group, to advise on means

³⁹ Interview 1311. This participant recalled a SAGIT member that would leave SAGIT meetings in progress to answer cell phone calls. This individual did not receive a membership renewal.

⁴⁰ Interview 1335.

of retaining Canada's cultural industries policy-making capacity in the context of trade liberalization.

The differences in membership characteristics between the pre-NAFTA (i.e., first and second) and third time periods account in large measure for the differences in the nature of participation between these two eras. First, the absence of creative interests ideologically opposed to free trade removed the fundamental conflict within the group between business interests and arts practitioners over the ideological underpinnings of free trade itself. That is, the absence of nationalistic artists removed one of the fundamental axes of intrasectoral conflict, that of the merits or demerits of trade liberalization. It thereby narrowed the scope of intrasectoral debate to issues dealing solely with the cultural industries in trade.

Second, the absence of arts practitioners also reduced the scope for sector-government conflict, as it eliminated the firm opposition within the group to the very concept of trade liberalization itself. As Chapter 5 discussed, this opposition generated irresolvable sector-governmental conflict as the SAGIT adopted an untenable negotiating position from the perspective of trade negotiators.

Third, the predominance of trade specialists and communications representatives on the SAGIT had the effect of reducing active conflict within the group. As previously discussed, one of the members who felt he lacked trade expertise and did not represent a

firm or sector large enough to oppose the views of the communications companies, chose to passively engage in the consultations. This individual chose not to actively voice his opinions. The membership characteristics of the group resulted in latent – rather than active – conflict, thereby creating the *appearance* of unanimity and permitting for collaboration and consensus among group members. The concluding chapter of this dissertation examines the implications of this finding, particularly its importance for contemporary understandings of the relationship between the structure and functioning of deliberative consultation processes.

Fourth, the presence of SAGIT members with considerable experience in (and with) government reduced sector-governmental conflict. In contrast to the CUSFTA period, for example, where SAGIT participants lacking government experience seemed more likely to interpret government actions as attempts to “contain” the group, many SAGIT members in this latter phase of the consultations possessed substantial experience with and in the government.⁴¹ This lessened the potential for conflict resulting from inexperience with government processes and procedures. As discussed below, the perceived policy influence of the group also contributed significantly to the collaborative sector-government relations during this time.

⁴¹ Three SAGIT members indicated they had worked in the government in senior executive positions for many years, while two others had worked extensively for the government in a consulting capacity, and three had acquired considerable experience with government as participants in prior consultation exercises.

Fifth, the comparatively greater degree of expertise in the SAGIT membership positioned the SAGIT to be able to provide more detailed, comprehensive and technical recommendations to the government. Moreover, it lessened the potential likelihood of SAGIT members engaging passively because of a lack of subject matter expertise, as was the case for some members in the NAFTA period.

Finally, because of the relatively greater representation of large communications firms, a number of participants noted that the group's discussions tended toward the concerns of larger corporations in the audiovisual sector.⁴²

Resources accorded to the group. SAGIT members spoke positively of the level of financial and bureaucratic resources allocated to the group, although this did not appear to condition their involvement in the consultation. The government reimbursed SAGIT members for their travel expenses, but as in the other consultation periods, did not remunerate members for their participation in the group. No SAGIT member indicated that the lack of remuneration affected the level or nature of their participation.

The group also received bureaucratic support from the Department of Foreign Affairs and International Trade, the Department of Canadian Heritage and Statistics Canada. As previously stated, both DFAIT and DCH seconded staff "who could write" to the SAGIT to draft documents for the group and the two departments, along with Statistics Canada, assisted the group with research materials to draft the SAGIT's 1999

report. In addition, the government hired a freelance writer to prepare the public version of the SAGIT's report. SAGIT members spoke positively of this support, although it did not appear to play a determinative role in their participation.⁴³

Policy Influence. All SAGIT members interviewed felt that the group possessed considerable policy influence, particularly with respect to the development of the government's negotiating position for the cultural industries. SAGIT participants stated that the government did not always adopt the group's recommendations,⁴⁴ but overall, they believed the government listened to and took into consideration the work of the SAGIT, and that the group could (and did) influence government policy.

In April 1997, in the midst of the *Sports Illustrated Canada* case (described below), Arthur Eggleton, then Minister for International Trade, requested the Cultural Industries SAGIT "provide advice on the challenges facing the industry and on what this

⁴² Interviews 1313, 1317, and 1326.

⁴³ Only one SAGIT member spoke negatively of public officials at DFAIT. As noted previously, this individual stated that bureaucrats at DFAIT attempted to block the group's access to the minister for International Trade and that they did not keep the SAGIT apprised of relevant developments in trade negotiations.

⁴⁴ Interviews 1317, 1323 and 1333. In the mid-1990s, for example, the SAGIT recommended that the government create the position of Cultural Ambassador, jointly responsible to the minister of Canadian Heritage and the minister of Foreign Affairs, to explain Canada's position on the cultural industries in trade to the international community. Despite the initially positive reception this idea received from public officials attending SAGIT meetings, the government ultimately did not pursue this recommendation, in the view of one SAGIT member, because of "turf wars" between the departments and ministers involved. (Interview 1323).

means for Canada's cultural trade policy."⁴⁵ Following some two years of study, the SAGIT submitted its report to the Minister and proposed to the government that it publicly release the document. SAGIT members felt that the public should get a "crystallized view" of the more elaborate and confidential report submitted to the government, but were limited in the extent to which they could disseminate the views expressed in the report because the group advises the Minister for International Trade on a confidential basis.

In 1999, the group urged the Minister to publish the report. The government agreed to this request, partly as a "trial balloon" of the ideas in the document. As noted above, the government hired a writer to draft the public version of the report, and revised sections of the document with an eye to Canada's diplomatic relations with the United States. Following the report's public release, the government referred the document to the Standing Committee on Foreign Affairs and International Trade, which held hearings on the ideas contained in the report (some of the SAGIT members appeared before the Committee in these hearings).

The public report, released in February 1999, bore the title *Canadian Culture in a Global World: New Strategies for Culture and Trade*. It recommended that the government adopt a new approach to the trade/culture dilemma in light of the multiple challenges facing the cultural industries. The report described the pressures facing the

⁴⁵ Department of Foreign Affairs and International Trade, *Discussion Paper: Towards a Canadian Position on Trade in Cultural Goods and Services* (May 1999),

sector, including foreign dominance of Canada's cultural market, technological developments weakening traditional cultural policy instruments, and the growth in the number of trade disputes over Canada's cultural policies. "Canada has reached an important crossroad in the relationship between trade agreements and cultural policies. The tools and approaches used in the past to keep cultural goods and services from being subject to the same treatment as other goods and services may no longer be enough. As is clear from events over the past few years, the cultural exemption has its limits."⁴⁶

The SAGIT recommended that the government pursue the negotiation of a new international instrument on cultural diversity that would "lay out the ground rules for cultural policies and trade, and allow Canada and other countries to maintain policies that promote their cultural industries."⁴⁷

Borrowing from the concept of biological diversity in the environmental policy field, the SAGIT adopted the concept of cultural diversity. The SAGIT proposed that in an era of globalization, national governments need the capacity to support their domestic cultures to avoid the development of a global monoculture. Under the lens of cultural diversity, measures to support domestic cultural industries are not protectionist, but rather, serve to promote and maintain cultural diversity at the global level. The following

<http://www.dfait-maeci.gc.ca/tna-nac/discussion/culture-e.asp>.

⁴⁶ Cultural Industries Sectoral Advisory Group on International Trade, *Canadian Culture in a Global World: New Strategies for Culture and Trade* (Ottawa: Department of Foreign Affairs and International Trade, February 1999), 3.

⁴⁷ Ibid, 31.

sections of this chapter discuss the Canadian government's adoption of the negotiating position the SAGIT's report recommended.

Members' perceptions of the degree of policy influence of the group appear to have played a strong role in accounting for participation levels. In contrast to the CUSFTA and NAFTA periods, when many participants characterized the SAGIT's influence as negligible, in the current period, none of the SAGIT members interviewed for this study stated that the group lacked policy influence. When asked what accounted for his high level of engagement, one member stated, "Having the government deliver on its commitment to consult. [Minister for International Trade] Sergio [Marchi] supported the process. ... [Ministers] have met personally with [the SAGIT] whenever we've wanted them to."⁴⁸

Another SAGIT member indicated, "We're making progress. At the beginning [Minister Pierre] Pettigrew did not buy the idea [of a new international instrument] at all. So members of the SAGIT met with him and in the end he came on-side."⁴⁹ Echoing this view, another member indicated that the Department of Canadian Heritage found the SAGIT's views "very congenial," and although this individual believed DFAIT was "less happy," he believed that the department "ultimately came around to the view."⁵⁰

⁴⁸ Interview 1335. Sergio Marchi was Minister for International Trade when the government publicly released the SAGIT's report.

⁴⁹ Interview 1333.

⁵⁰ Interview 1323.

A further member believed that the government's decision to publicly release the SAGIT report generated high levels of participant engagement.⁵¹ Moving the group's ideas into the public domain generated considerable interest on the part of the members, ostensibly because there would be more pressure brought to bear on the government (and hence greater policy influence of the SAGIT) if the report was received positively in the public domain.

A further member with considerable experience in matters of culture and trade at the international level echoed these comments respecting the group's policy influence. He believed that the cultural industries in many other countries did not "have the ears of their trade ministers" to the extent that Canada's cultural industries did and described the Canadian government as an "enlightened government" in comparison with its international counterparts.⁵² This individual stated that the Minister for International Trade charges the group with examining Canada's cultural industries measures, determining how they relate to the country's international trade obligations, and advising the government on what stances to take internationally.

Four SAGIT members indicated that the group's recommendations regarding the international promotion of cultural diversity directly resulted in the government's creation of the International Network on Cultural Policy (INCP).⁵³ The INCP, created by the Minister of Canadian Heritage Sheila Copps in 1998, is a global network of national

⁵¹ Interview 1317.

⁵² Interview 1311.

culture ministers that serves as a forum for discussion of issues of common interest. The INCP's purpose is "to build awareness and increase support for cultural diversity in an era of globalization and technological change."⁵⁴ Specifically, the Network aims to "strengthen cultural policies to enable governments, together with civil society, to create an environment that values diversity, creativity, accessibility and freedom."⁵⁵ The US is not a member of the INCP and Heritage Minister Sheila Copps initially did not invite US participation in the network.⁵⁶

Role of Alternative Channels

The findings in this third consultation period respecting the role of alternative channels are in keeping with the dissertation's working hypothesis that the presence (or lack) of alternative channels will not play a crucial role in influencing engagement levels where participants believe state behaviour favours their interests. In the period leading up to the Third WTO Ministerial Conference, alternative channels did not appear to exert a significant influence on participant engagement in the consultations. While SAGIT members noted the existence of a variety of domestic public channels, such as direct representations to DFAIT, DCH, or the Ministers of either of these departments, they

⁵³ Interviews 1311, 1323, 1333 and 1335.

⁵⁴ INCP website, http://64.26.177.19/about/index_e.shtml.

⁵⁵ Ibid.

⁵⁶ See Christopher Sands, "Canada and the Bush Challenge," *Canada Focus* 2, 1 (2001). Available on-line at <http://www.csis.org/americas/canada/focus/focus0101.html>.

regarded these alternative channels as complementary forums for interest representation.⁵⁷

These findings lend support to the hypothesized correlation between the role of the state and alternative channels. Where participants in a consultation perceive the consultation as wielding a considerable degree of policy influence, they are less likely to exit the consultation for extant alternative channels or to create alternative channels to represent their interests.

Role of Reframing Processes

In addition to the perceived weaknesses of the cultural industries exemption described in Chapters 5 and 6 – i.e., the retaliatory clause, the exceptions to the exemption, and the CIE’s potential deterrent effect on cultural industries policy-making – there emerged another compelling indication for many in the cultural community that the CUSFTA exemption (carried over into NAFTA) was not living up to the government’s depiction of there being “nothing [in the Agreement] to prevent present and future measures to protect and promote Canadian culture and the industries that support it.”⁵⁸

⁵⁷ Four SAGIT members discussed the creation of a number of international channels in the years following the release of the SAGIT report but did not remark on the existence or potential utility of such forums at the time the SAGIT was drafting its report. These international channels included the International Network for Cultural Policy, noted in the previous section, as well as the International Network on Cultural Diversity and the Coalition for Cultural Diversity, two nongovernment organizations advocating for the NIICD. (Interviews 1311, 1323, 1326 and 1335).

⁵⁸ External Affairs Canada, “Canada’s New Free Trade Agreement – Culture.” (as quoted in Jon R. Johnson and Joel S. Schacter, *The Free Trade Agreement: A Comprehensive Guide* (Aurora: Canada Law Book Inc., 1988), 139).

In the post-NAFTA period, cultural trade disputes between Canada and the United States grew in both number and intensity. As described in Chapter 4 and below, these disputes spanned a wide range of cultural industries sectors including television and satellite broadcasting, book and periodical publishing, and film distribution. While a thorough examination of each of these cases is beyond the scope of this dissertation (and comprehensive accounts of these disputes have been rendered elsewhere⁵⁹), this section analyses the dispute over the Canadian edition of *Sports Illustrated*, the case that study participants consistently identified when discussing cultural trade disputes and their effect on cultural community members' assessments of the relative effectiveness of the cultural industries exemption. *Sports Illustrated* appeared uppermost in the minds of both SAGIT members and nonmembers in the cultural community alike.⁶⁰

In January 1993, the American firm Time Warner announced its intention to launch a Canadian edition of its magazine *Sports Illustrated*. While the American edition of *Sports Illustrated* was already available in Canada, Time's launch of a Canadian edition, a so-called "split-run"⁶¹ magazine, was contentious from the perspective of Canada's cultural industries policy in the periodical sector.

⁵⁹ See Keith Acheson and Christopher Maule, *Much Ado about Culture: North American Trade Disputes* (Ann Arbor: University of Michigan Press, 1999).

⁶⁰ As noted previously, two SAGIT members also identified the dispute involving Country Music Television. Readers will recall that Chapter 4 briefly examined this case as well as other key cultural trade disputes in the time period this dissertation examines (1985 to 1999).

⁶¹ A split-run edition of a magazine is one that contains identical (or virtually identical) editorial content that appears in the magazine's home market, while substituting locally-based advertising content targeted to subscribers in a secondary (in this case export) market. It is a means for publishers to tailor magazines to export or other regional

As noted in Chapter 4, the Canadian government has long discriminated against split-run magazines on the rationale that they divert advertising revenues – an integral component of magazine publisher revenues – away from the Canadian magazine industry to foreign periodical publishers. The traditional policy instruments to support the Canadian periodical industry in this way were Section 19 of the Income Tax Act and Tariff Item 9958. Beginning in the 1960s, Section 19 of the Income Tax Act established that the expenses of advertising could only be deducted for advertisements placed in magazines printed, typeset, edited and published in Canada.⁶² Tariff Item 9958 empowered customs inspectors to seize split-run magazines with advertising directed at the Canadian market as they crossed the Canadian border, effectively prohibiting entry into Canada of split-run editions. The Canadian government initially grandfathered the two-largest split-runs with the most political influence, *Reader's Digest* and *Time*, from the application of these provisions.⁶³

Using new information and communications technologies, Time Warner stymied these public policy measures by digitally transmitting the editorial content of *Sports Illustrated* into Canada. Time Warner evaded the traditional safety valve of Tariff 9958 –

markets while incurring little or no additional costs to produce new editorial content. In the case of *Sports Illustrated*, for example, the Canadian edition contained largely the same articles and pictures as the American edition, but with advertising space sold to firms advertising to the Canadian market.

⁶² As previously discussed, CUSFTA 2007 eliminated the requirement that magazines be printed and typeset in Canada in order for the expenses of advertising to be eligible for income tax deduction.

⁶³ Acheson and Maule, *Much Ado About Culture*, 188. The grandfathering provision was subsequently eliminated, and resulted in an organizational restructuring for *Reader's Digest* and the closure of *Time's* Canadian editorial office.

seizure of prohibited split-runs as they physically crossed the Canadian border – by electronically transmitting the editorial content to Canada for printing: “Tariff Item 9958 could not stop this transfer, as no physical object was involved.”⁶⁴ In addition, although advertising expenses in the Canadian edition of *Sports Illustrated* were not eligible for tax deductibility, Time Warner – because editorial costs had already been covered in the American market – could afford to price advertising at a level low enough to compensate advertisers for the foregone income tax deductions.

In response to this development, the Canadian magazine publishing industry began to press the Canadian government to block the entry of the Canadian edition of *Sports Illustrated* on the grounds that it constituted a split-run edition.⁶⁵ According to the president of the Canadian Magazine Publishers Association (CMPA), “...new remedies must be sought to support an old policy. We’ve got to get the message out to all the U.S. magazines waiting in the wings that Canada will not tolerate a split run.”⁶⁶ The CMPA estimated that the first Canadian edition of *Sports Illustrated* “ate up” a quarter of a million dollars worth of Canadian advertising revenue that could otherwise have accrued to the Canadian magazine industry.⁶⁷

⁶⁴ Ibid, 191.

⁶⁵ Harvey Enchin, “SI Move Brings Calls for New Law: Magazine Publishers Want Ottawa to Take Action to Block ‘Canadian’ Editions,” *The Globe and Mail*, March 16, 1993, B5.

⁶⁶ As quoted in *ibid*.

⁶⁷ “Canadian Culture,” letter from Catherine Keachie, Executive Director, Canadian Magazine Publishers Association, *The Globe and Mail*, April 10, 1993, D7.

To develop a response to the impending entry of the Canadian edition of *Sports Illustrated* into the country, the Canadian government convened a Task Force on the Magazine Industry in March 1993. The Task Force recommended in its March 1994 final report the application of an excise tax of 80% on advertising revenues in split-run magazines like *Sports Illustrated*. Given that the Canadian Edition of *Sports Illustrated* had already begun to establish itself in the Canadian market, the task force recommended that the magazine be grandfathered from the new excise tax. The Canadian government, however, chose not to grandfather *Sports Illustrated* in its new excise tax bill. The bill received royal assent in December 1995.

Time Warner responded by ceasing publication of the Canadian Edition of *Sports Illustrated* and requesting that the United States Trade Representative use the WTO's dispute resolution process to adjudicate the matter. Following the failure of consultations between Canada and the United States to resolve the dispute, the US requested the WTO establish a dispute panel.

Canada ultimately lost this case on all three of the policy measures disputed by the United States: the new excise tax, Tariff Item 9958 and a longstanding postal subsidy program for Canadian periodicals. The decisions of the dispute settlement Panel and the Appellate Body on appeal ruled that Canada's Tariff Item 9958 was inconsistent with

Canada's national treatment obligations under GATT 1994, as were the excise tax and the disputed postal subsidies.⁶⁸

The Canadian Magazine Publishers Association condemned both rulings, but argued that the WTO decision did not prohibit Canada from pursuing its policy objectives in the magazine industry, merely the *means* of pursuing those objectives.⁶⁹ Commenting on the WTO ruling's relationship to Canada's magazine policy, the publisher of *Saturday Night* magazine stated, "It's a technical problem with the way we were doing it, not what we were doing."⁷⁰ The CMPA warned that if the government could not replace the excise tax and postal subsidies with other alternatives, American magazines would drain valuable advertising revenues from Canadian magazine publishers.⁷¹ The section below on outcomes discusses the government's proposed policy changes in response to the WTO rulings. As described, Canada's new policy proposals resulted in further bilateral trade frictions with the United States.

⁶⁸ *Report of the Panel in Canada—Certain Measures Concerning Periodicals*, WT/DS31/R (Adopted March 14, 1997) and *Report of the Appellate Body in Canada—Certain Measures Concerning Periodicals*, AB-1997-2, WT/DS31/AB/R (Adopted June 30, 1997). For a detailed discussion of the arguments put to the WTO dispute settlement Panel and Appellate Body by Canada and the United States, as well as the dispute panel and Appellate Body's reasoning, see Aaron Scow, "The *Sports Illustrated Canada* Controversy: Canada 'Strikes Out' in Its Bid to Protect Its Periodical Industry from U.S. Split-Run Periodicals," *Minnesota Journal of Global Trade*, 7 (1) (Winter 1998), 245-285.

⁶⁹ Brenda Dalglish, "Magazine Industry Blasts WTO Ruling, Says Ottawa has Given Assurances it will Appeal," *Financial Post*, 91(3), January 18/20, 1997, 6; and Brenda Dalglish, "Canadian Publishers Say WTO Ruling is a 'Technical' Problem," *Financial Post*, 10 (85), July 2, 1997, 3.

⁷⁰ As quoted in Dalglish, "Canadian Publishers Say."

⁷¹ Dalglish, "Canadian Publishers Say."

The importance of this case, from the perspective of many in the cultural sector, was that Canada's cultural industries exemption in CUSFTA and NAFTA did *not* shield Canadian cultural industries policy measures from the disciplines of the international trading regime. The United States bypassed the exemption and brought the matter directly to the WTO,⁷² thereby depriving Canada of the ability to use the CIE. "By choosing to go before the WTO, the United States effectively made sure that the exception of [NAFTA's] Annex 2106 would not be raised."⁷³

Moreover, even though NAFTA Article 103 gives priority to NAFTA in cases of inconsistency between NAFTA and the GATT, because the GATT and WTO Agreement do not legally recognize the validity of NAFTA's priority provision, Canada, as a member of the WTO, must enforce WTO decisions.⁷⁴

In the view of many in the cultural sector, Canada's cultural industries exemption was powerless in this dispute since the United States bypassed its regional trade obligations and opted instead for the multilateral trading regime – where Canada has no such exemption.⁷⁵ It is perhaps not surprising, then, that seasoned observers reflecting on

⁷² CUSFTA's Article 1801(2) and NAFTA's Article 2005 of NAFTA provide that complaining parties can settle disputes in the forum of their choice, either the WTO or NAFTA.

⁷³ Ivan Bernier, "Cultural Goods and Services," 124.

⁷⁴ Ibid.

⁷⁵ Ritchie argues that the *Sports Illustrated* case demonstrates the effectiveness of the NAFTA cultural industries exemption because the US opted for the multilateral trading forum where Canada does not possess an exemption (Ritchie, *Wrestling With the Elephant*, 225). While the NAFTA and the WTO do constitute two separate forums, if an exemption under the former can be bypassed through recourse to the latter, the NAFTA

Canada's bilateral cultural trade disputes, assert, "If the objective of the exemption was to leave unimpaired Canada's ability to pursue cultural objectives, it has missed its target."⁷⁶

For many SAGIT participants, this case formed the backdrop for their participation in the consultation. In their view, the dispute demonstrated the limitations of the cultural industries exemption, and highlighted the need to develop a new approach to the cultural industries in trade. The case prompted many members of the SAGIT to rethink the means of protecting cultural industries policy-making capacity in the international trading regime, and served as a catalyst to both high levels of engagement and intrasectoral collaboration. In the words of one SAGIT member, "There was a problem with the cultural industries exemption and people understood that it had to get fixed."⁷⁷

OUTCOMES

Following Canada's loss at the WTO, the government scrambled to continue to protect the country's domestic magazine industry while respecting its international trade obligations. The country's proposed approach ultimately proved problematic and resulted in renewed threats from the United States that it would retaliate or again launch a trade challenge against Canada.

exemption may possess limited capacity to shield Canada's cultural industries policy measures from trade challenges.

⁷⁶ Dymond and Hart, "Abundant Paradox," 7.

⁷⁷ Interview 1323.

The approach, embodied in Bill C-55, *The Foreign Publishers Advertising Services Act*, sought to criminalize the placement of advertising in foreign periodicals by Canadian firms. The Canadian government rationalized that it had not taken any multilateral obligations on advertising services, and that therefore it bore no obligations to extend national treatment to foreign publishers with respect to advertising services. Initially tabled in Parliament in October 1998, the proposed legislation received a rough ride both domestically and bilaterally.

Domestically, while the Canadian magazine publishing industry welcomed the bill, the Canadian advertising industry opposed the criminalization of advertising in American split-run editions. Charging that the Department of Canadian Heritage developed the proposed legislation without consulting the advertising industry, the Association of Canadian Advertisers, along with the Canadian Media Directors Council and the Institute of Canadian Advertising, strongly opposed the legislation, saying that it aimed to protect large publishing firms at the expense of other Canadian companies.⁷⁸ The advertising industry threatened to launch a Charter challenge against Bill C-55, warranting that it infringed on advertisers' rights of free speech.⁷⁹

The Association of Canadian Advertisers stated that if the government's objective was to protect culture, it should do so out of general revenues, not on the back of the

⁷⁸ Paul Brent, "Advertisers Blast Copps for Protecting 'Special' Publishers: Say Bill C-55 Created to Aid Telemedia, Maclean Hunter," *Financial Post (National Post)*, 1(21), November 19, 1998, C4.

advertising industry.⁸⁰ The Association proposed that Canada use Canadian content quotas in American magazines sold in Canada so that Canadian firms could advertise in American magazines meeting content requirements.⁸¹

The policy measures in Bill C-55 also appeared to receive a bumpy ride in Cabinet. In the midst of the brewing trade battle between Canada and the United States over the bill, Minister for International Trade Sergio Marchi told the *National Post* that the government was prepared to water down the proposed legislation.⁸² Meanwhile, Minister of Canadian Heritage Sheila Copps maintained that the legislation would go forward as planned. During the negotiations for a bilateral deal to resolve the magazine issue (see below), the Copps maintained that she and Marchi were simply playing “Good cop, bad Copps”, but interviews with members of the cultural community do not support this version of events. A number of current and former SAGIT members described Copps as a relatively weak member of Cabinet and as having “lost” and “backed down” on the magazine issue at the Cabinet table.⁸³

Bilaterally, the United States reacted strongly to Bill C-55. In September 1998, Washington threatened that Canada would face an international trade battle if it did not

⁷⁹ Tod Mohamet, “Advertisers Oppose Protection for Magazines,” *The Ottawa Citizen*, November 26, 1998, D8.

⁸⁰ Patrick Allossery, “Advertisers Offer Alternatives to C-55: Current Legislation Ignores a Key Group – The Folks who Pay,” *National Post*, March 19, 1999, C3.

⁸¹ Ibid.

⁸² Canadian Press Newswire, “Marchi Chides Copps Over Split-Run Magazine Law,” November 28, 1998.

⁸³ Interviews 1326 and 1334.

withdraw the bill.⁸⁴ Domestic magazine publishers were incensed with the American administration's conduct. The chair of the Canadian Magazine Publishers' Association characterized Washington as a "petulant bully", and, using an argument sounding much like Michael Wilson (Minister for International Trade at the NAFTA negotiations), said of the Americans, "...they never negotiated, or paid for, access to the advertising services market of Canada [in multilateral negotiations]. They are trying to get through the back door what they couldn't get through the front door."⁸⁵

The Clinton administration also threatened to invoke NAFTA's cultural exemption clause, and indicated that it would target such industries as steel (the main industry in Sheila Copps' Hamilton riding), textiles and clothing for retaliation if the Canadian government enacted the proposed legislation.⁸⁶ An official in the Office of the United States Trade Representative stated that the American administration would publish a retaliation list if it became clear that Bill C-55 would become law.⁸⁷

In response to this pressure from the United States, Canada decided to negotiate with the Clinton administration to develop a workable solution to the conflict. An unidentified official close to Prime Minister Jean Chrétien described the political-

⁸⁴ Chris Cobb, "Publishers Angered by U.S. 'Bullies'," *The Edmonton Journal*, September 16, 1998, A8.

⁸⁵ As quoted in *ibid*.

⁸⁶ Peter Morton, "U.S. Targets Steel, Textiles as Trade Rift Intensifies: Major Canadian Exports: Magazine Policy Puts Countries on Collision Course," *National Post*, January 12, 1999, A1. One SAGIT member said of the Americans' rationale for targeting the garment industry: "Because that's the closest you can get to [Prime Minister Jean Chrétien's riding of] Shawinigan" (Interview 1329).

economic calculus facing the government, "Protecting magazines as a symbol of Canadian culture is important to this government. But to what degree do you put at risk a trade relationship worth \$260-billion a year with a country that takes 84% of our exports?"⁸⁸

The two countries negotiated in April and May of 1999 and agreed on a number of measures at the end of May to resolve the conflict and avert a trade battle. The two governments agreed that US magazines can legally sell up to 18 percent (12 percent in the first year rising to 18 percent in the third) of their advertising space to Canadian advertisers. Beyond this level, the Canadian government can fine American magazine publishers, unless the magazine in question contained a majority of Canadian content.

Canadian advertisers, meanwhile, can claim a 50 percent tax deduction if they advertise in an American magazine with less than 80 percent Canadian content and they can claim a 100 percent deduction if the magazine publishes 80 percent or more Canadian content. With respect to ownership, the agreement permits American publishers to establish operations in Canada provided they intend to publish a majority of Canadian content and create employment. The prohibition on acquisitions of Canadian magazine publishers by American firms remains intact.

⁸⁷ Morton, "U.S. Targets."

⁸⁸ Giles Gherson, "Better than Nothing, But Not By Much: Many Canadian Magazine Publishers Say the Government's Deal on Bill C-55 is a Sham," *National Post*, May 31, 1999, A14.

In exchange for these changes to Canada's proposed legislation, the United States agreed to drop the threat of punitive trade measures. To mitigate the effects of lost advertising revenues to Canadian periodical publishers, the government promised to provide subsidies and tax expenditures for the industry.

The Canadian government characterized the deal as a victory for Canada. Minister for Canadian Heritage Sheila Copps stated, "For the first time in history ... the United States has recognized the protection and promotion of Canadian content as a legitimate Canadian objective in our bilateral dealings."⁸⁹ The Americans did not share this triumphant assessment. A senior Clinton administration advisor, speaking on condition of anonymity, stated, "This issue has nothing to do with culture – it was simply a matter of ensuring competition. ... The issue is one of commerce. ... The key issue here has been access to a market."⁹⁰

The Canadian magazine industry, for its part, responded negatively to the news. The Canadian Magazine Publishers Association maintained throughout the bilateral negotiations that permitting Canadian advertisers to buy more than 10 percent of the advertising space in American magazines would seriously harm the industry. The publishers believed the new bilateral deal would destroy the Canadian magazine industry; they estimated it would result in Canadian magazines losing half of their advertising

⁸⁹ As quoted in Jennifer Ditchburn, "Canada Claims 'Cultural' Victory; But Critics Worry Amendments to Bill to Appease U.S. Will Hurt Magazine Industry," *The Edmonton Journal*, May 27, 1999, A3.

⁹⁰ Ibid.

revenues to American magazines. The chair of the CMPA said of the agreement, "It's a bad deal. It makes no sense. It's a cave-in."⁹¹

Members of the broader cultural community also did not view the outcome as a victory for the sector. The Association of Canadian Publishers, representing the interests of Canada's book publishing industry, opposed the foreign ownership provisions of the deal, stating, "We've always felt that Canadian ownership is critical to generating Canadian content. ... That's been a cardinal rule in book policy and it was in magazine policy – until now."⁹²

Further, as noted above, some study participants characterized the bilateral deal as a loss for the Minister of Canadian Heritage at the Cabinet table, as evidence that she backed down in response to pressure from her Cabinet colleagues. One interviewee pointed to the outcome on magazines and said of the trade and heritage Ministers, "They got their asses kicked with steel-toed boots [by the Americans]!"⁹³ For another former SAGIT member, the shift to government subsidies in the magazine sector represented an unwelcome development. This person believed that subsidies would result in undesirable political influence on the editorial content of magazines, "We never wanted to take a

⁹¹ Dana Flavelle, "Canadian Advertisers Laud Split-Run Deal; Publisher Calls Decision 'A Devastating Blow'," *Toronto Star*, May 28, 1999, E1.

⁹² John Geddes, "A Run for the Money: With a New Deal, the Magazine Debate Shifts from Culture to How to Keep Ad Dollars in Canada," *Maclean's*, 112(23), June 7, 1999, 54.

⁹³ Interview 1321.

nickel from the government. How can we take subsidies? Can we criticize the government if we take subsidies?"⁹⁴

Other Canadian industry sectors, meanwhile, greeted the news positively. The steel industry expressed relief that the threat of sanctions had come to an end. The president of the Canadian Steel Producers Association stated, "It's never comfortable being the chips in someone's poker game."⁹⁵ The Canadian advertising industry also welcomed the deal, and predicted that the percentage of total advertising dollars directed to magazines would increase.⁹⁶

Given the high level of activity on matters of trade in the cultural sector in the late 1990s, it is perhaps not surprising that the government welcomed the report of the Cultural Industries SAGIT. In the months following the February 1999 public release of the report, the Government of Canada adopted a new negotiating position for the cultural industries in trade, a position the SAGIT recommended in its report.⁹⁷

The position, predicated on the development of a "new international instrument on cultural diversity" (NIICD), emerged out of the SAGIT report. The NIICD approach seemingly marked a break with the government's previous stance on trade in cultural goods and services, namely, the pursuit of a cultural industries exemption. As Chapters 5

⁹⁴ Interview 1334.

⁹⁵ As quoted in Ditchburn, "Canada Claims 'Cultural' Victory."

⁹⁶ Flavelle, "Canadian Advertisers."

and 6 described, Canada sought and obtained a CIE in both the CUSFTA and the NAFTA,⁹⁸ but although the CIE exempts the cultural industries from the provisions of the CUSFTA and the NAFTA, it contains a retaliatory clause that can serve to weaken its potential effectiveness. Moreover, as the *Sports Illustrated* dispute demonstrated, the United States can bypass these regional trade agreements and resolve cultural trade disputes through the WTO, where Canada has no such exemption.⁹⁹ The post-NAFTA period demonstrated the potential deficiencies of the CIE approach in the view of SAGIT members, prompting the group to search for a new means of addressing the culture/trade nexus.

This search culminated in the development of a new negotiating position on culture, the pinnacle of which was the pursuit of a new international instrument on cultural diversity. The SAGIT recommended the Canadian government initiate this instrument, which “would lay out the ground rules for cultural policies and trade, and allow Canada and other countries to maintain policies that promote their cultural industries. ... The new instrument would identify the measures that would be covered and

⁹⁷ Department of Foreign Affairs and International Trade, *Initial Canadian Negotiating Proposal*, Negotiations on Trade in Services (GATS 2000), (March 14, 2001), 2.

⁹⁸ The Canadian government also negotiated cultural industries exemptions in its free trade agreements with Israel, Chile and Costa Rica, as well as in its 24 bilateral Foreign Investment Protection Agreements.

⁹⁹ While there is no cultural industries exemption for goods, Canada has not taken any obligations respecting national treatment or market access for the cultural industries in the services sector. Given the definitional debates over items that could be categorized as goods or services, however, any protections under the GATS may be conditioned by obligations under WTO agreements respecting goods.

those that would not, and indicate clearly where trade disciplines would or would not apply.”¹⁰⁰

The government appeared to act on these recommendations. At time of writing, the NIICD resembled a two-pronged strategy. The first prong was the long-term objective of negotiating an international instrument that would ultimately affirm the right of signatory countries “to maintain policies that promote their culture, while respecting the rules governing the international trading system and ensuring markets for cultural exports.”¹⁰¹ Canada was pursuing the negotiation of the instrument through its work with the International Network on Cultural Policy (INCP). The INCP Working Group on Cultural Diversity and Globalization, formed in September 1999 and chaired by Canada, advised Network Ministers on cultural policy-making “in an era of globalization, trade liberalization and rapid technological development.”¹⁰² The Working Group recommended Network Ministers develop an international instrument on cultural diversity whose objectives would include “ensuring that nations can develop and use tools to create enabling conditions for the creation, production, distribution, promotion, conservation and circulation of cultural content.”¹⁰³

¹⁰⁰ Cultural Industries SAGIT, *Canadian Culture in a Global World*, 31.

¹⁰¹ International Network on Cultural Policy, “Recent International Initiatives on Cultural Diversity,” Document prepared by the Liaison Bureau following the Contact Group Meeting in Lisbon (April 2000), 3. Available at http://64.26.177.19/w-group/wg-cdg/init_e.pdf

¹⁰² INCP website: http://64.26.177.19/w-group/wg-cdg/index_e.shtml.

¹⁰³ Working Group on Cultural Diversity and Globalization of the International Network on Cultural Policy, “Paper for Ministerial Consideration: Scope and Framework of an International Instrument on Cultural Diversity,” paper prepared for the Fourth INCP

The approach's second prong operated in the shorter term: the Canadian government stated that it would not make any new commitments in the cultural sector in trade negotiations until such time as an instrument could be negotiated.¹⁰⁴

This shift in negotiating position appears to follow the same policy path as its CIE predecessors of balancing off domestic and international level concerns with a double-edged strategy. Seasoned observers note the slim prospects of negotiating such an instrument outside (or inside) the current trade regime, as well as the limited effectiveness of such an agreement, in the event that it could be negotiated.¹⁰⁵

Moreover, these analysts suggest that it is highly improbable the NIICD would prove attractive to the United States, Canada's major trading partner in the cultural sector, thus further sapping the prospects for or potential utility of such an agreement. In the words of the SAGIT member opposed to the recommendations in the SAGIT report, "[The prospects for an] NIICD might be thought of as the prospect that we'd get a single North American currency without the acquiescence of the US. ... It is naïve fundamentally [to think] that the US would agree somehow if all other countries signed

Annual Ministerial Meeting, Lucerne, Switzerland, September 24-26, 2001. http://64.26.177.19/meetings/2001/papers_e.shtml.

¹⁰⁴ Department of Foreign Affairs and International Trade, *Initial Canadian Negotiating Proposal*, 2.

¹⁰⁵ See Dymond and Hart, "Abundant Paradox," 17-18; Christopher Maule, "Trade and Culture: Rhetoric and Reality," *Policy Options* (March 2002), 42-43, and Daniel Schwanen, "A Room of Our Own: Cultural Policies and Trade Agreements," *Choices: Managing Global Linkages* 7, 4 (Montreal: Institute for Research on Public Policy, April 2001), 15.

[an NIICD].”¹⁰⁶ Trade policy scholars echo this view, pointing to the improbability that the US and other major cultural exporters would sign on to an agreement limiting their access to export markets: “it is delusional to base any position on the prospect that the United States or other major traders, such as Germany or the UK, will accept any dilution of the international trade rules to the disadvantage of their industries.”¹⁰⁷

To secure the support of these countries, Canada would likely need to make significant concessions, the antithesis of an international instrument whose very *raison d’être* is to ensure that nations can enact cultural industries policies. Bernier considers unlikely the possibility of negotiating such an instrument at the WTO in the absence of concessions: “La réalisation d’un consensus dans un tel contexte ne sera pas aisée et ne se concrétisera qu’au prix de concessions concernant le contrôle rigoureux des actions des États dans le domaine culturel.”¹⁰⁸ Furthermore, Canada’s usual allies on cultural matters, France and Australia, seem less inclined to support Canada in its pursuit of a new international instrument, a development that further dampens the potential of successfully negotiating such an agreement.¹⁰⁹

And while the negotiation of an NIICD outside of the WTO regime is not without merit, it too poses considerable challenges. If the new instrument were negotiated

¹⁰⁶ Interview 1321.

¹⁰⁷ Dymond and Hart, “Abundant Paradox,” 18.

¹⁰⁸ Ivan Bernier, “Mondialisation de l’économie et diversité culturelle: les enjeux pour le Québec,” Document de réflexion préparé pour la Commission de la culture de l’Assemblée nationale du Québec (mars 2000), 24.

¹⁰⁹ Maule, “Trade and Culture,” 24-25.

external to the trade regime, the talks would most likely take place under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO). The twin weaknesses of this approach are the absence of the United States from UNESCO and the organization's lack of power vis-à-vis the WTO.¹¹⁰ Moreover, an agreement outside of the trade regime would be difficult to enforce and would lack the dispute settlement mechanism of existing trade agreements.¹¹¹

The NIICD, therefore, like its CIE predecessor, may be best understood as a double-edged strategy. The Canadian government continues to face non-overlapping winsets in international negotiations on the cultural industries sector. The SAGIT report, representing the views of a wide range of interests in the cultural sector, suggests continued strong domestic-level pressure to retain Canada's capacity to discriminate in favour of the domestic cultural industries.¹¹² Powerful American cultural interests, meanwhile, seem no less determined to liberalize cultural trade, maintaining that Canada's cultural concerns are a form of disguised protectionism.¹¹³ The Canadian government, for its part, remains trapped between this rock and a hard place.

¹¹⁰ Bernier, "Mondialisation," 24.

¹¹¹ Schwanen, "A Room of Our Own," 15.

¹¹² Members of the Cultural Industries SAGIT at the time of its report included representatives from Shaw Communications, Astral Communications, Alliance Atlantis Communications, Douglas & McIntyre Ltd., CanWest Global Communications Corp., the Canadian Cable Television Association, and the Canadian Musical Reproduction Rights Agency.

¹¹³ Ian Jack, "Valenti Says Canadian Film Policy 'Infected'," *National Post*, February 8, 2002.

CONCLUSIONS

The consultations preceding the 1999 Seattle Ministerial of the World Trade Organization constituted the third investigative period of this dissertation. In the years following the negotiation of the NAFTA, a number of cultural trade disputes began to confront Canada's cultural industries sector. In addition to the disputes described in Chapter 4 over Country Music Television and satellite broadcasting, emerged the dispute over Time Warner Inc.'s launch of a Canadian edition of the magazine *Sports Illustrated*. This event marked a watershed for many in the cultural industries sector, and represented a crucial consideration for the SAGIT in its report to the government on the cultural industries in a globalized policy-making milieu.

In this period of the SAGIT's existence, members exhibited high levels of engagement, collaborative intrasectoral dynamics, and collaboration between the government and the sector. The common threat of trade liberalization – particularly the trade challenge of *Sports Illustrated* – served as a powerful incentive to collaboration. Moreover, as the SAGIT developed its recommendations to the government to adopt a new approach to the cultural industries in trade agreements, its members believed it was critical to advocate for the new international instrument on cultural diversity with a unified sectoral voice, not only with regards to the government of Canada, but in the international milieu as well.

The findings in this interval support the dissertation's hypothesis that alternative channels will not tend to exert a strong influence on engagement where participants believe state conduct in the consultation favours their interests. SAGIT members believed the group could influence the government's negotiating position in the sector and participated actively as a result. Moreover, they spoke favourably of the government's conduct in the consultations, noting that the government provided research assistance to the SAGIT in writing the report, and worked with the group to publicly release the document. They viewed alternative means of pursuing their policy interests over and above the SAGIT as complementary to the consultation.

The level and nature of participation obtained in this period again underscore the importance of membership selection to the functioning of a consultation. The industrial and expert character of the group facilitated intrasectoral collaboration and generated high engagement levels. The findings in this chapter also reveal the role that passive engagement can play in generating intrasectoral collaboration.

Chapter 8, the dissertation's final chapter, examines the overall findings of the dissertation, identifies the contributions and limitations of the research, and suggests potential avenues for future research investigation.

CHAPTER 8

CONCLUSION

INTRODUCTION

This dissertation began by posing a targetted question about private sector participation in government consultation processes in an era of policy globalization:

What accounts for the level and nature of private sector participation in deliberative consultations in the context of globalization and trade negotiations?

The study hypothesized that three main factors would account for outcomes of participation: state behaviour respecting membership selection, resourcing, and the policy influence of the group, alternative channels of interest representation available to consultation participants, and reframing processes resulting from threats or opportunities in the international environment. This concluding chapter of the dissertation summarizes the main research findings respecting these hypotheses, and identifies the primary contributions and limitations of the research. It concludes with a postscript examining recent activities of the cultural industries SAGIT.

MAIN RESEARCH FINDINGS

The dissertation tested the hypotheses that state behaviour would materially affect the level of engagement and the nature of sector-governmental relations, that the number of alternative channels would tend to condition the level of engagement where state behaviour proved unfavourable to participant interests, and that reframing processes

would bear an important impact on the nature of consultation members' intrasectoral engagement. With respect to sector-governmental relations, the dissertation proposed that government conduct would exert a determining influence on the nature of the relationship between the sector and the government.

The study tested these hypotheses empirically through a longitudinal qualitative case study of the federal government's Sectoral Advisory Group on International Trade in the cultural industries sector. The findings suggest that state behaviour and reframing processes exert a considerable influence on the level and nature of private sector engagement in deliberative consultations, and that where consultation participants perceive a consultation as inimical to their interests (particularly in terms of the level of policy influence of the group), they will tend to seek recourse to alternative channels of interest representation.

The CUSFTA and NAFTA consultation periods illustrated the inter-relationship between state conduct and alternative channels. During these negotiations, a number of SAGIT members, together with others in the cultural industries, created the Canadian Culture/Communications Industries Committee to lobby the government independently of the SAGIT. SAGIT members believed that the government would not accord sufficient weight to the views expressed in the SAGIT for three primary reasons, one pertaining to membership and the other two to the potential policy influence of the group.

First, because the SAGIT membership included nationalist artistic interests who opposed the free trade initiative *in toto* and who (according to a number of industry representatives) did not fully understand or appreciate the business interests at play. In the view of some corporate members of the SAGIT, the policy influence of the group was directly related to whether the government perceived the SAGIT as composed of “responsible businesspeople” or “lunatic flagwavers.” The industry representatives felt the need to create the CCIC to demonstrate to the government that it was not merely artists who were concerned about culture in the negotiations, but large industries as well.

Second, corporate SAGIT members believed in the necessity of creating an alternative channel because they felt that the government would accord greater weight to the views expressed by other industry sectors involved in the SAGIT process. They believed the cultural SAGIT required additional support to maximize the probability that the government would listen (and heed) the views of the cultural sector.

Third, at the outset of the CUSFTA negotiations, industrial interests worried that the consultation process might represent nothing more than a government attempt to coopt or muzzle participants opposed to trade liberalization. They did not know *ex ante* what level of policy influence the group might possess, and created the CCIC in part in order to hedge against this possibility. Industry could control the activities of the CCIC, whereas the SAGIT was a channel of interest representation under government control.

These findings respecting alternative channels illuminate important dynamics regarding domestic level negotiations in a two-level negotiating framework. While the government can attempt to structure these relations, metaphorically playing host and “laying the table” for domestic “guests,” in a pluralistic political environment, the private sector, if dissatisfied with the state-structured setting, can metaphorically build and lay a table of its own. While the creation and activities of the CCIC visibly demonstrated these dynamics, the CCIC literally played out the metaphor of setting a separate table when the group invited Simon Reisman and Gordon Ritchie to dine with them at the Rideau Club. The meeting did not take place in government offices, as most of the SAGIT meetings did, it was not attended by other government officials as SAGIT meetings were, and in contrast to the SAGIT process, the invitation came from the private sector to the government, as opposed to the other way around.

In contrast to the above-noted findings at CUSFTA and NAFTA, research findings in the consultation period prior to the Third WTO Ministerial support the hypothesis that alternative channels will not tend to influence engagement levels where participants assess state conduct positively. SAGIT members in the third consultation interval believed the group could have an effect on the government’s approach to negotiations in the sector and participated actively as a result.

The dissertation’s empirical findings also lend support to the importance of state behaviour in shaping the level and nature of engagement. Perceptions of the degree of

policy influence of the group played a particularly strong role in accounting for outcomes of participation. A number of participants, when informed of the study's main research questions, pointed immediately to the importance of perceptions of policy influence in accounting for the level and nature of engagement. One member stated, "There's no point in participating if the [consultation group's] reports are just going to end up on a shelf somewhere collecting dust."¹

Many members pointed to the importance of the views of the Minister for International Trade and public officials at DFAIT in accounting for the nature of participation. A number of SAGIT members drew distinctions between different Ministers for International Trade in terms of their orientation towards and appreciation for cultural matters in trade – and as a result, their relative level of support for the SAGIT's work. In contrast to the first consultation period, where most SAGIT members remarked on the difficulty of getting cultural matters "on the radar screen" and the uncertainty and ambiguity regarding whether the cultural industries were "on" or "off" the negotiating table, in the second and third consultation periods, SAGIT members indicated that the government generally supported the exemption of or special treatment for the cultural industries in trade.

Moreover, SAGIT members in the first consultative period commented on DFAIT officials' and trade negotiators' relative lack of concern for or understanding of cultural matters, and indicated that this characteristic of officials resulted in conflict between the

¹Interview 1338.

group and the government. In contrast, in the second and third consultation periods, SAGIT members did not characterize sector-governmental relations as conflictual. Rather, most participants believed the government genuinely sought their input, and many felt the group's activities could influence policy.

The above-noted perceptions respecting the degree of policy influence of the group played a powerful role in shaping sector-government relations, with conflict characterizing relations in the CUSFTA period, and collaborative dynamics predominating in the subsequent two periods.

State decisions respecting the membership profile of the group also influenced participation. In the CUSFTA period, the inclusion of both artistic and private sector interests on the SAGIT generated conflict among group members because of their differences in attitude and training. As noted above, this membership profile also contributed to the private sector's creation of a separate industry-led channel of interest representation to demonstrate to the government the importance of the issues to the corporate sector.

Membership selection in the second consultative period also conditioned intrasectoral relations. As noted in Chapter 6, the diversity of member interests promoted the discussion of issues at broad levels of generality, which facilitated collaboration.

In the third consultation period, the members represented primarily industrial interests and many participants possessed considerable expertise in the cultural industries and trade. This relative homogeneity of the group influenced intrasectoral relations by removing a potential axis of group conflict. It also generated relatively higher engagement levels because, in contrast to NAFTA, for example, where a number of individuals engaged passively for lack of expertise, in the third period, virtually all individuals believed they possessed sufficient expertise to contribute to the group's deliberations.

The empirical findings respecting reframing processes lend strong support to the study's assertion that collaboration (conflict) will characterize intrasectoral relations when international threats or opportunities serve to align (uncouple) participant interests. At all consultation periods, notwithstanding the diversity of the group's membership along subsectoral and industrial/artistic lines, the common threat of trade liberalization generated a powerful incentive to collaborate.

Many participants interviewed for this study spoke to the common interests among members of the SAGIT to protect domestic policy measures in the cultural sector from the threat of trade liberalization. Not only did they recognize the commonality of their interests as a result of the SAGIT process, they also felt there was value in developing a common position for the sector in its relations with government (and, in the third consultation period, in the sector's activities in the international milieu). In sum,

not only did the common threat of trade liberalization favour collaborative dynamics by aligning participant interests, it also provided powerful incentives for the sector to develop a common and unified position – a “single voice” for the sector, as opposed to the “many voices” with which the private sector commonly speaks (as noted in Chapter 3).

While this dissertation focused on questions of process in consultations, it also examined negotiation outcomes using a two-level framework. The thesis used the concept of double-edged provisions to analyse provisions in the CUSFTA and NAFTA respecting the cultural industries, as well as the Canadian government’s more recent negotiating position for the cultural industries in trade. The notion of double-edged provisions aimed to draw attention to provisions’ simultaneous efforts to satisfy domestic and international demands.

The Cultural Industries Exemption in the CUSFTA and NAFTA contained elements to satisfy both domestic and bilateral concerns. The CIE contained a clearly worded exemption for domestic consumption, and an equally clearly worded retaliatory clause for the United States. While all trade agreements are ultimately the result of bargaining and concessions of parties to the agreement – country A exposes domestic sector X to greater international competition by increasing country B’s access to the market for X while country B does likewise for country A in another sector – this dissertation argued that the CIE is a negotiating outcome of a different kind.

The retaliatory clause arguably contradicts the exemption in the provision preceding it. This characteristic differs from a concession where a country “gives” in sector A to “get” in sector B (or gives in domestic sector A to get access to sector A in trading partners’ markets) because the subject of negotiation is identical in both instances – whether (or not) the cultural industries are subject to the provisions of the CUSFTA or NAFTA. The retaliatory clause amounts to a unilateral right of retaliation with no dispute settlement process required.

As Dymond and Hart note, the intent of the cultural exemption is to establish a special regime for the cultural sector, but “A well-ordered special trade regime needs, at a minimum to establish certainty and predictability in trading relationships for the goods and services affected...”² The CIE in fact accomplishes just the opposite, generating considerable ambiguity in Canada’s trading relationship with the United States in the cultural sector, and spawning radically differing assessments of the extent to which the CIE shelters the cultural industries from the provisions of the agreements.

In effect, the CIE may reproduce in the cultural policy-making milieu writ large the concerns of SAGIT members that the cultural SAGIT would possess relatively little policy influence when stacked up against other sectors. The CIE may result in a potential chilling effect at the Cabinet table on cultural policy-making because of the perceived or real threat of US retaliation for measures inconsistent with the CUSFTA and NAFTA.

The American government's behavior at the disputes over Country Music Television and *Sports Illustrated* demonstrated that it will threaten retaliation in other Canadian industry sectors when Canada seeks to discriminate in favour of its cultural sector.

Dymond and Hart sum the situation up well, when they state that experience to date with the cultural exemption suggests that "the terms and conditions under which the exemption may be invoked, and any limitations that may exist on the US right to retaliate, remain essentially unknown and probably unknowable."³ While the exemption enabled the Canadian and American governments to bridge their mutually exclusive win-sets in the cultural sector, this double-edged provision resulted in considerable ambiguity and uncertainty – not the hallmarks of certainty and predictability characteristic of a genuine special regime.

CONTRIBUTIONS AND LIMITATIONS OF RESEARCH

Given the importance contemporary scholarship places on ongoing and deliberative consultations, it is crucial to advance understandings of participant engagement in consultative processes. If the cultivation of regularized and meaningful consultations between the government and domestic interests can contribute to national capacities for adjustment in a globalized economic and political milieu, theoretical and empirical research on engagement in these processes acquires a critical importance in contemporary studies of policy globalization and consultation. This research seeks to

² W.A. Dymond and Michael M. Hart, "Abundant Paradox: the Trade and Culture Debate," paper prepared for Conference on Trade and Culture (Ottawa: Centre for Trade Policy and Law, November 28, 2001), 7.

contribute to this literature by proposing a repertoire of possible factors that account for participant engagement in consultations.

The dissertation illuminates some fundamental dynamics characterizing private sector engagement in deliberative trade policy consultations. It contributes to scholarly inquiry respecting trade negotiation processes by seeking to broaden understandings of domestic-level consultations in the field of trade policy. While the empirical investigation focused on the cultural industries sector, the research framework could illuminate consultation outcomes in other industry sectors as well. The behaviour of the state, the role of alternative channels, and the impact of trade liberalization on participant interests are all factors germane to trade policy consultations in other industry sectors (see below for discussion of potential differences in conducting research on sectors with different characteristics than the cultural industries).

The research framework could also serve as a useful point of departure for research on deliberative consultations in other policy fields and with other consultation audiences. State behaviour and alternative channels are likely to play important roles in consultations regardless of policy field, and although reframing processes may not characterize the policy context in all instances, exogenous threats and opportunities exerting differential impacts on consultation members, are likely present in many policy domains. Indeed, one of the primary rationales for consultation may be to advise the government on how to respond to radically changed circumstances in a policy field.

³ Ibid.

This dissertation may also begin to set the stage for evaluation of consultation processes. While it may be a laudable goal to establish regularized deliberative consultations, how does one begin to evaluate these processes? What constitutes an “effective” consultation? The economy of a consultation may be ascertained with relative ease – i.e., taking a given consultation design, was the process undertaken at the lowest possible cost? – but evaluating the impact and/or efficiency of a consultation may prove far more challenging.⁴

How does one measure the benefits and impacts of a consultation? What indicators could be used – better policies? Improvements in the design and implementation of programs and services? Improved relations between the government and domestic interests? Participant satisfaction? How does one measure each of these indicators?

Denis Stairs provides an intriguing assessment of the broad-based consultations with private sector and non-government organizations (NGOs) in the period preceding the Seattle Ministerial of the WTO. These consultations did not constitute deliberative sessions in the sense of the term used in this dissertation (i.e., ongoing dialogue and deliberation among and between state and non-state actors), but Stairs’ research aims to critically evaluate this consultation process.

⁴ Impact evaluations focus on outcomes and examine whether government initiatives result in their intended effects while efficiency evaluations examine the ratio of benefits to costs of a government program and alternative uses of scarce resources. (Leslie Pal,

Stairs examined participant satisfaction with the process, as well as the character of state-societal relations in the consultations. His major conclusions and recommendations respecting these broad-based consultations pertained to managing participant expectations, specifically informing participants at the outset of consultations as to the scope of debate to take place in the process. A number of the NGO participants interviewed for Stairs' study felt the consultations resembled "briefing sessions" more than they did two-way information flows with genuine debate. NGOs sought to debate the fundamentals of Canadian trade policy. In light of this apparent mismatch between participant objectives and consultation outcomes, Stairs cautioned the public service that unless the minister is present, it "should probably avoid staging consultations in a way that encourages participants to think that the occasion is an appropriate one for mounting fundamental challenges to basic premises of government policy."⁵ Stairs also noted that the consultations consumed substantial bureaucratic and financial resources.

This assessment of the broad-based consultations stands in contrast to the findings respecting the more narrowly-circumscribed and deliberative consultations undertaken with the cultural industries SAGIT. These latter consultations appear to have consumed a relatively lower level of bureaucratic and financial resources. Participants were not remunerated for their time, and they indicated that although public servants provided

Beyond Policy Analysis: Public Issue Management in Turbulent Times, 2nd edition (Toronto: Nelson, 2001), 280).

⁵ Denis Stairs, "Foreign Policy Consultations in a Globalizing World: The Case of Canada, the WTO, and the Shenanigans in Seattle," in *Policy Matters*, Vol. 1, no. 8, (Montreal: Institute for Research on Public Policy, December 2000), 37.

secretariat support and some research assistance to the group, SAGIT members initiated and undertook the majority of the group's work.

But perhaps more importantly, this dissertation suggests the potential utility of using indicators on engagement when conducting consultation evaluations. The level and nature of participation constitute integral elements of a consultation. For example, as noted in Chapter 2, in the absence of a core group of actively engaged participants, a consultation can break down. Further, this study demonstrated that participants will engage passively where they believe they lack adequate expertise to contribute to a consultation, or where they perceive that the purpose for consultation is to coopt nonstate actors to predetermined policy outcomes. If the government genuinely wishes to elicit the views and advice of domestic actors, it should strive to appoint members with a direct interest in the topic of consultation, or to provide information and orientation to members with lower levels of subject matter expertise.

Moreover, to minimize instances of passive engagement resulting from participant perceptions that consultation is a means of legitimizing predetermined policy trajectories, it would be wise to avoid elaborate consultation processes when there is little room for genuine policy change.

The nature of engagement also represents a potentially important indicator in evaluating consultations. The capacity for collaboration despite intrasectoral diversity or

sector-governmental differences constitutes a critical characteristic of contemporary consultations. While differences of interest will underlie consultation processes more often than not, the literature on policy-making in a globalized milieu suggests that the willingness of participants to attempt to address or resolve differences when they emerge – to collaborate in the face of conflict – represents a core strategic competence in the contemporary policy environment.⁶

Having enumerated these research contributions, it is important to recognize the limitations of the present study. As noted in Chapter 2, the choice of the cultural industries sector had the potential to affect the research findings. Chapter 2 identified three characteristics of the sector that could influence the study results: restrictions on foreign ownership and control, the twin challenges of trade liberalization and technological change facing the sector, and the predominantly protectionist orientation of the industry.

Chapter 2 proposed that foreign investment restrictions could affect the research findings by serving to reduce the diversity of policy preferences intrasectorally which could facilitate intrasectoral collaboration. The empirical investigation suggests that this

⁶ As noted in Chapter 5, one SAGIT member at CUSFTA felt that his role in the consultation was to act as a facilitator of sorts, seeking to bridge the differences of opinion and orientation between the artistic and industrial sides of the SAGIT. The use of facilitators and other forms of alternative dispute resolution is becoming increasingly common in the energy sector. See Monica Gattinger, "Alternative Dispute Resolution in Energy Regulation: Opportunities, Experiences and Prospects," in G. Bruce Doern, ed., *Canadian Energy Policy in the Sustainable Development Era* (Toronto: Oxford University Press, in press).

sectoral characteristic did influence the research findings. The members of the SAGIT represent Canadian business interests and the group works to ensure that the Minister for International Trade does not appoint individuals from foreign multinational enterprises to the group. To the extent that the SAGIT did not include representation of foreign investors, this facilitated collaboration among the members of the group by eliminating a potentially powerful conflict-producing dimension.

On the matter of challenges facing the sector, Chapter 2 conjectured that these challenges might affect the research findings to the extent that they served predominantly to align (uncouple) participant interests. The findings in Chapters 5 through 7 bear out this initial supposition, as study interviews indicated that challenges facing the sector represented primarily a common threat to the group, and as such facilitated intrasectoral collaboration.

Chapter 2 also suggested that the protectionist sentiment characterizing the cultural industries sector might lead to inevitable sector-governmental conflict irrespective of participants' beliefs about the degree of policy influence of the SAGIT. The findings reveal that this sectoral characteristic did not appear to affect the findings in this manner. As described in Chapters 5 through 7, conflict did not predominate sector-governmental relations. In the NAFTA and pre-Seattle Ministerial periods, the SAGIT and the government exhibited collaborative relations and the perceived degree of policy

influence of the group played an important role in accounting for these collaborative dynamics.

Given the apparent influence of the choice of the cultural industries sector on the study's findings, it would be important that future research querying participant engagement in deliberative consultations examine industry sectors with characteristics that differentiate them from the cultural industries sector. In particular, it would be useful to select sectors or consultation processes including both foreign and domestic interests, sectors facing challenges (or opportunities) that uncouple participant interests, and sectors that are predominantly open in their orientation toward trade liberalization.

POSTSCRIPT

One of the themes of this dissertation's empirical inquiry surrounded the degree of ambiguity characterizing trade policy in the cultural industries sector. In the current period, the most marked uncertainty surrounds the New International Instrument on Cultural Diversity – not only the extent to which it will or will not protect cultural industries policy, but also the prospects of successfully negotiating such an instrument to begin with. The Cultural Industries SAGIT has recently released a second public report on the NIICD, recommending the government seek to negotiate the instrument outside of the framework of the World Trade Organization.⁷

For the Canadian government, the instrument arguably serves a useful political purpose in that it enables the government to simultaneously respond to challenges faced at the domestic and international levels. It assists the government in retaining the support of its domestic cultural sector while seeming to pose no material threat to the United States. The NIICD may therefore again offer a double-edged approach to the enduring dilemma of culture and trade. At the domestic level, the pursuit of a new instrument arguably responds to the needs of Canada's cultural sector. It symbolizes a "new" strategy for culture and answers to the growing recognition that the CIE approach may bear considerable limitations. At the international level, the NIICD could be said to respond to the United States, by potentially posing no credible threat to American interests in the cultural domain. This is principally because of the limited prospects for the negotiation of such an instrument. From this vantage point, it is not surprising that the government's position on the NIICD has been described by veteran observers as "heavy on posture and light on substance."⁸

This feature of the NIICD is likely to play a crucial role in participant engagement in the SAGIT process in the years to come. While current SAGIT members described the group as possessing a desirable level of policy influence, if the group begins to doubt the conviction of the government's position, the consultation process may break down as members decrease their activity levels or disengage from the process.

⁷ Cultural Industries Sectoral Advisory Group on International Trade, *An International Agreement on Cultural Diversity: A Model for Discussion* (Ottawa: Department of Foreign Affairs and International Trade, 2002).

⁸ Dymond and Hart, "Abundant Paradox," 2.

APPENDIX A

METHODOLOGY

The sources of information and data for this study included primary and secondary research material pertaining to the cultural industries sector, trade policy consultations, the SAGITs, trade negotiations, and trade disputes. The primary research consisted of 30 semi-structured interviews with key informants. As discussed below, some of these individuals were able to speak to consultation outcomes in the SAGIT at two or more of the consultation periods under investigation, yielding a distribution of 13, 15, and 13 interviews for the dissertation's three study periods, CUSFTA, NAFTA and the Third WTO Ministerial, respectively.

Interviews were conducted on a confidential, anonymous and not-for-direct attribution basis. They took place primarily with past and present SAGIT members, but also with public officials involved in the SAGIT process, and public, private, and academic policy actors in the broader cultural industries' and trade policy communities. As noted in Chapter 3, SAGIT members provide confidential advice to the government and this confidentiality tempered the information they could provide in interviews. Where warranted, SAGIT members spoke in their personal capacities rather than in their capacities as SAGIT participants to provide information for the study.

The duration of individual interviews ranged from 30 to 90 minutes, with most interview sessions lasting approximately 45 minutes. Current and former SAGIT

members were asked a range of questions pertaining to their involvement in the consultation, beginning with the level of their personal engagement in the group, and moving to their perceptions of the nature of the group's engagement along both intrasectoral and sector-governmental lines. Participants were asked to characterize their level of engagement as active, passive or disengaged, and the nature of engagement as collaborative or conflictual. For each response, they were prompted to identify the reasons they felt underpinned their level of participation and the nature of the group's engagement. Participants were probed to more fully explore each of the reasons they identified as driving the level and nature of engagement.

As noted in Chapters 5, 6 and 7, when asked to account for the level and nature of engagement, participants' comments pointed to the role of the state, alternative channels and reframing processes. While they did not necessarily use these terms to express themselves, where their responses pertained to these three factors, they were asked to reflect further on the influence of these variables on consultation outcomes.

A sampling of interview questions appears below:

Level of participation

How active would you say you were in the SAGIT (e.g., attending meetings, sharing your views at meetings, working on committees, etc.)?

Would you say you were actively engaged, passively engaged (i.e., attending meetings but not actively participating), or did you disengage (i.e., resign) from the SAGIT process?

What tended to drive the level of your participation? That is, what sorts of factors motivated you to (or discouraged you from) participating?

Role of alternative channels. *Over and above the SAGIT, what other means were there for you to pursue your policy objectives when you were a SAGIT member? (e.g., other consultations you could participate in, other government departments or public officials you could meet with, other national or international organizations you could be involved in, other policy processes at the national or international level, other ways of pursuing your objectives outside of the policy process).*

Would you say that the existence of these "alternative channels" to the SAGIT process had an impact on the amount of time and/or effort you invested as a SAGIT member? If so, how? And if so, why?

Role of the state. *What level of bureaucratic and financial support did the SAGIT receive? Did the resources accorded to the group impact the level of your participation? If so, how? How representative would you say the SAGIT membership was of the cultural sector? Did this influence the level of your participation? If so, how? What level of policy influence would you say the SAGIT had? Did this perception impact your participation? If so, how?*

Nature of participation

Intrasectoral Collaboration

How would you characterize the dynamics of the SAGIT when you were involved? Did SAGIT members share similar viewpoints on issues, did they work well with one another, or were there quite a few competing viewpoints? Did members tend to work collaboratively, or did they more conflict? What factors would you say underpinned the conflict (collaboration) within the group?

Role of reframing processes. *As with many industry sectors, the process of trade liberalization (i.e., the negotiation of trade agreements and the emergence of trade disputes) has impacted the cultural sector. What were the main issues respecting trade and the cultural industries at the time of your involvement in the SAGIT?*

Would you say these issues brought your policy interests closer in line with those of other sectors in the industry? Or did they drive them apart? In your opinion, did this alignment (uncoupling) of interests impact group dynamics in the consultation? If so, how?

Sector-governmental Collaboration

How would you characterize the relations between the SAGIT and the government at the time of your involvement with the SAGIT? Did the relationship tend to be collaborative, or was it more often conflictual? What tended to drive the conflict (collaboration)?

Role of the state. Did the level of bureaucratic and financial resources accorded to the group impact relations between the SAGIT and the government? If so, how? What about the membership of the group? Did this influence the nature of the SAGIT's relationship with the government? Finally, did the relative policy influence of the SAGIT impact its relations with the government? If so, how?

Table 18 on the following page details the interviews conducted for this study, showing the total number of interviews undertaken at each consultation period with SAGIT members and with other individuals close to the SAGIT process (trade negotiators, public officials involved with the SAGIT, and other members of the cultural sector actively involved in cultural matters in trade).¹ As shown in the table, 13 interviews were conducted at CUSFTA (7 with SAGIT members and 6 with others), 15 interviews took place for the NAFTA period (10 with SAGIT members and 5 with others), and for the third period of the study, 13 interviews were undertaken (9 with SAGIT members and 4 with others). A total of 30 interviews were undertaken in the course of this research, 22 with SAGIT members and 12 with others close to the SAGIT process.² Interviews were conducted from the Winter of 2000 to the Winter of 2003, with the majority of interviews undertaken in the Summer and Fall of 2002.

¹ To ensure the protection of study participants' confidentiality and anonymity, file numbers, locations and dates of interviews are not provided. There are relatively few policy actors in the cultural sector who are close to the SAGIT process, so the provision of dates and interview locations for individual file numbers could readily compromise the anonymity of study participants.

² Totals in the final column cannot be added vertically as some interviewees were able to speak to consultation outcomes in the SAGIT at more than one time period. For

Table 18: Summary of Interviews Conducted

Consultative Period	SAGIT Members	Others	Total
CUSFTA	7	5	12
NAFTA	10	4	14
Third WTO Ministerial	9	4	13
Grand Total	22	10	30

Acquisition, Verification and Corroboration of Information

A number of potential limitations or challenges inherent in the research related to the acquisition, verification, and corroboration of information. While these challenges characterize all social sciences research, as discussed below, they loom particularly large in trade policy research. Accordingly, the following description of the challenges identifies the range of strategies undertaken in this research to address and mitigate them.

Information Acquisition. As Mayer points out, trade policy-making and international trade negotiations are conducted largely in secrecy.³ For scholars lacking firsthand experience in the formation of trade policy, the element of secrecy can present a

example, a number of SAGIT members served at two or more of the study's consultative periods and therefore were able to speak to their experiences at each of these points in time. In addition, a number of non-SAGIT members were close to the SAGIT process over more than one of the study's time periods. Totals in the bottom row also cannot be added as a number of individuals were able to speak to the SAGIT process at all three time periods but in different capacities (e.g., one individual could speak to the issues as a SAGIT member for one period and as a government employee for another).

³ Frederick W. Mayer, *Interpreting NAFTA: The Science and Art of Political Analysis* (New York: Columbia University Press, 1998).

significant obstacle to information acquisition. This study undertook a number of strategies to address this challenge. First, it utilized *anonymous and confidential interviews*. Guaranteeing anonymity and confidentiality to interviewees is often the only means of securing the agreement of actors to participate in interviews in trade policy research. In a study of NAFTA negotiating outcomes in culture, textiles, automobiles and pharmaceuticals, Robert writes of her interviews with negotiators and private sector actors: "They gave interviews in return for a promise of anonymity and confidentiality."⁴

The present study also obtained, where possible, *referrals* to interview candidates. In some instances this was not possible as it would have compromised the anonymity of the interviewee making the referral, but where feasible, it assisted in securing participation in the study. Potential interviewees were more likely to agree to an interview based on a referral from a trusted colleague. This strategy was particularly useful at the outset of the research. Initial meetings with a number of bureaucratic, academic, and private sector players in the SAGIT process yielded numerous referrals to other individuals they believed would be willing to participate in the study.

Second, this study benefited from several *informants* that supplied critical insider information. Cameron and Tomlin state in their study of the North American Free Trade Agreement (NAFTA), "We began with an informant...in the Canadian government who provided us with essential insider's information, crucial in determining what questions to

⁴ Maryse Robert, *Negotiating NAFTA: Explaining the Outcome in Culture, Textiles, Autos and Pharmaceuticals* (Toronto: University of Toronto Press, 2000), 21.

ask before conducting extensive interviews with the key players.”⁵ In the context of the present study, the informants were individuals who had knowledge of the SAGIT process.

Third, in the interview process itself, *interviews used information gleaned from previous interviews to encourage participants to supply additional information*. This tactic had two forms. First, interviewees were presented with the views of other actors from previous interviews (of course, confidentiality and anonymity would not permit revelation of the identity of the opinion-holder). Cameron and Tomlin write on their use of this strategy in researching NAFTA, “We were able to use the views of the negotiators in each country to tease out further information from their counterparts in the other two countries.”⁶ Second, the researcher “raised the discussion level” of the interview by asking questions that demonstrated a higher level of knowledge. Cameron and Tomlin reveal, “When an interviewee appeared to underestimate our level of knowledge, we were able to move the discussion to a higher level simply by asking more probing questions based on what previous interviewees...had told us.”⁷

Finally, the research did not rely solely on interview methodology but also made extensive use of *secondary sources*. As Doern and Tomlin state in their study of the Canada United States Free Trade Agreement, “...the free trade story goes beyond what

⁵ Maxwell A. Cameron and Brian W. Tomlin, *The Making of NAFTA: How the Deal was Done* (New York: Cornell University Press, 2000), 12.

⁶ Cameron and Tomlin, *The Making of NAFTA*, 12.

⁷ Ibid.

can be derived from interviews alone.”⁸ Secondary sources assist in reconstructing trade policy-making processes and sequences of events,⁹ in judging trade policy actors’ interests and the context and forces pressing on them,¹⁰ and in reinforcing researchers’ interpretations of events and their consequences.¹¹ In the present study, as previously indicated, secondary sources included other research, published accounts and written documents pertaining to the trade policy-making process, the SAGITs, and the culture/trade nexus, as well as media and industry publications’ coverage of the issues.

Information verification and corroboration. The challenge of verification and corroboration takes place at two levels. At the first, in the absence of firsthand evidence of the process under investigation, researchers confront the limitations of circumstantial inference.¹² These include incomplete or inaccurate information, difficulty in assessing the motivations, biases, and interests of parties, and the challenges of relying on others’ recollections and perceptions of events. This dissertation employed a variety of tactics to address this challenge. First, the study increased the interview sample size, i.e., *conducted multiple interviews*, to reduce information inaccuracies and information incompleteness. In their study of the CUSFTA, Doern and Tomlin utilize a similar strategy. On the existence and mitigation of this challenge they write, “Even when only a

⁸ G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991), x.

⁹ Cameron and Tomlin, *The Making of NAFTA*; Mayer, *Interpreting NAFTA*; and Robert, *Negotiating NAFTA*.

¹⁰ Fen Osler Hampson and Michael Hart, *Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment* (Baltimore: Johns Hopkins University Press, 1995).

¹¹ Doern and Tomlin, *Faith and Fear*.

¹² Hampson and Hart, *Multilateral Negotiations*.

few persons were present at the meetings or negotiations, they often saw them from very different perspectives and sometimes provided quite dissimilar descriptions of what had occurred. ... That is why it was necessary to interview as many of the persons involved as possible.”¹³

Second, the study *broadened the population base of the interview sample* beyond the participants involved directly in the SAGIT process. This consisted of interviewing players on all sides of the issue, interviewing players at various organizational levels, and interviewing actors not directly involved in the SAGITs but active in the broader cultural industries and trade policy communities. Broadening the population base helped to minimize information incompleteness and inaccuracies, to uncover the motivations, biases, and interests of key players, and to assist in the verification and corroboration of information derived from interviews with key players. Trade policy scholars routinely employ this strategy. Research methodologies for the study of NAFTA included interviews with actors from all three participating countries,¹⁴ government officials at various levels,¹⁵ and members of the private sector who followed the negotiations closely.¹⁶

Third, as previously stated, the research did not rely solely on interview methodology but maximized the use of *secondary sources*. Other published research and

¹³ Doern and Tomlin, *Faith and Fear*, x.

¹⁴ Cameron and Tomlin, *The Making of NAFTA*; and Robert, *Negotiating NAFTA*.

¹⁵ Cameron and Tomlin, *The Making of NAFTA*; and Mayer, *Interpreting NAFTA*.

¹⁶ Robert, *Negotiating NAFTA*.

written documentation assisted in filling information gaps from the interviews, verifying and corroborating information derived from interviews, and in reconciling and understanding inconsistencies in information provided by interviewees. Further, it assisted in determining the motivations, biases, and interests of interviewees.

The second level of the challenges to verification and corroboration pertains to confidential and anonymous interviewing. When the research methodology involves confidential and anonymous interviews, how can the research be verified or corroborated? In this context, the accuracy of the research may be called into question. Furthermore, the integrity of the research may be questioned if the study relies too heavily on a researcher's subjective interpretation of private interviews.

This study employed a number of strategies to address this challenge. First, the dissertation includes the above detailed account of the methodological procedures used (i.e., population breadth and depth, interview sample size and breakdown, reference to secondary sources, etc.). The purpose of this comprehensive description is to maximize the *replicability* of the study.

Second, as described above, the research involved *multiple interviews* to achieve a higher level of accuracy. Third, as already noted, the dissertation made extensive use of *secondary sources* in order to minimize the extent to which the study relied on the researcher's subjective interpretation of private information sources. Finally, because the

investigation required confidential and anonymous interviews, the methodology attempted to *minimize researcher bias* by selecting a case in which the researcher had not previously been personally or professionally engaged. Both the culture/trade nexus and the SAGIT process itself were “new territory” for the researcher.

APPENDIX B
TIMELINE OF SAGIT MILESTONES, TRADE NEGOTIATIONS AND TRADE DISPUTES

Table 19: Timeline of SAGIT Milestones, Trade Negotiations and Trade Disputes

Year	SAGIT Milestones	Trade Negotiations			Main Trade Disputes
		CUSFTA	GATT/WTO	NAFTA	
1985		25 September 1985 Parliamentary announcement of upcoming negotiations			
1986	9 January 1986 SAGIT's announced 25 April 1986 Chairpersons appointed 27 June 1986 Members of Arts and Cultural Industries SAGIT announced	21 May 1986 Negotiations officially launched	September 1986 Uruguay Round launched		
1987		23 September 1987 Negotiations suspended Resumed early Oct.			
1988		2 January 1988 Agreement signed 21 Nov 1988 Conservatives re-elected			
1989	27 January 1989 Second round of SAGIT appointments announced 17 October 1989 New labour members appointed	1 January 1989 CUSFTA enters into force			

Year	SAGIT Milestones	Trade Negotiations			Main Trade Disputes
		CUSFTA	GATT/WTO	NAFTA	
1990					
1991				12 June 1991 Negotiations officially launched	
1992				12 August 1992 Agreement signed	
1993				March 1993 Side agreements negotiated 13 Aug 1993 Agreement signed	<i>Sports Illustrated</i> 11 January 1993 Time Warner announces Canadian edition March 1993 Task Force on the Magazine Industry
1994			April 1994 Uruguay Round concluded	1 January 1994 NAFTA enters into force	Country Music Television (CMT) New Country Television applies to CRTC Satellite broadcasting <i>Sports Illustrated</i> March 1994 Task Force Report

Year	SAGIT Milestones	Trade Negotiations			Main Trade Disputes
		CUSFTA	GATT/WTO	NAFTA	
1995	16 January 1995 New chairs and members appointed (SAGIT becomes "Cultural Industries" SAGIT)		January 1995 WTO formally established		CMT CRTC delists CMT
1996					<i>Sports Illustrated</i> Dec. 95 excise tax bill CMT CRTC approves NCN/CMT partnership
1997					<i>Sports Illustrated</i> 14 March 1997 Report of the WTO Panel adopted 30 June 1997 Appellate Body Report CMT CRTC softens delisting approach
1998					<i>Sports Illustrated</i> May 1998 Abolition of Tariff Code 9958 and excise tax Oct. 1998 Bill C-55
1999	17 February 1999 SAGIT report released		30 Nov. - 3 Dec. 1999 Third WTO Ministerial Conference (Seattle)		<i>Sports Illustrated</i> May 1999 Canada-US bilateral agreement

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