



Coalition  
for the Diversity of  
Cultural Expressions

Comments from the Coalition for the Diversity of Cultural Expressions

in the context of the consultation on

Americas Partnership For Economic Prosperity

Presented to

Trade Negotiations – North America

Global Affairs Canada

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## Presentation of the CDCE

The [Coalition for the Diversity of Cultural Expressions](#) (CDCE) brings together the main English- and French-speaking professional organizations in the cultural sector in Canada. It is composed of more than fifty organizations that collectively represent the interests of more than 360,000 professionals and 2,900 companies in publishing, film, television, digital media, music, performing arts and visual arts.

Equally concerned about the economic health of the cultural sector and the vitality of cultural creation, the CDCE works mainly to ensure that cultural goods and services are excluded from trade negotiations and that the diversity of cultural expressions is present and protected in the digital environment.

It promotes the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions and ensures its implementation to give it full force of application at the national level. It also ensures that the government's capacity to implement policies to support local cultural expressions is properly preserved and deployed; that trade liberalization and technology development do not systematically lead to a standardization of content and a disruption of local ecosystems in the face of foreign investment; and that the CDCE also provides the secretariat of the International Federation of Coalitions for Cultural Diversity (IFCCD).

### 1. Introduction

The primary objective of CDCE is to ensure Canada retains the sovereign right to develop, implement and modify the policies, programs and measures required to ensure we have a robust supply of Canadian artistic expressions of all kinds, in every medium, and from all communities. CDCE also works to protect and promote our artists and cultural industries, and to ensure there is a rich diversity of cultural expressions in Canada and globally, including in the digital environment.

Given that this right is challenged and restricted by trade, investment, and related agreements, including those dealing with the digital economy, it is essential that Canada have a strong and effective cultural exemption in every agreement it concludes.

On March 9, 2023, the Government issued a consultation on the [Americas Partnership for Economic Prosperity \(APEP\)](#). In response to the consultation CDCE offers the following comments.

In summary:

- APEP provisions are likely to infringe on our cultural sovereignty.
- The cultural sector, including CDCE, must be involved in all consultations related to APEP.
- As a precondition for engaging in discussions with APEP partners, Canada must require that all agreements arising from these discussions include the cultural exemption in the Canada-United States-Mexico Agreement (CUSMA).

## 2. Protecting the diversity of cultural expressions in the Americas Partnership for Economic Prosperity: argument and recommendations

[Announced in January 2023](#), the partnership involves Canada, the United States, Mexico and nine other countries in the hemisphere. As the [consultation document](#) notes, these partners together represent “about 90 percent of the Western Hemisphere’s GDP and nearly two thirds of its people.” The partnership, according to the [Joint Declaration](#), promises “to accelerate the region’s economic growth,” including boosting competitiveness, building more resilient supply chains, creating quality jobs, combating climate change, and reinvigorating the hemisphere’s economic institutions.

The [Joint Declaration](#) states (in part):

“3. [...] We recognize that fairness and competition in open markets are vital to the vibrancy of our democratic institutions [...].

“6. Our longstanding trade and commercial relationships will serve as the foundation for our efforts to expand the benefits of sustainable, inclusive, and responsible trade to all. Along these lines, we intend to promote greater economic integration in the region and seek to increase collaboration on customs, trade facilitation, logistics, and good regulatory practices; address non-tariff barriers; and promote sustainable quality investment. We intend to promote trade that advances workers' rights and economic security and elevates the role of the self-employed, entrepreneurs, and micro-, small-, and medium-sized enterprises to support supply chain diversification. We seek to build an environment of trust and confidence in the digital economy, and to advance secure and resilient digital infrastructure and platforms. We also intend to foster an inclusive digital economy by taking concerted steps to close the digital divide, promote digital-enabling skills, and leverage digital tools, digital literacy, and technology to meet our goals.”

Given this explicit focus on trade, investment, economic development, and the digital economy, **it is astonishing** that the Global Affairs [consultation document](#) states: “APEP is not a free trade agreement and is not expected to include tariff reductions or market access commitments.” At best this statement is deeply rooted in the past, when trade was about the movement of goods across borders. Trade agreements since the 1980s have gone far beyond trade in goods, and have been about far more than tariff reductions and market access commitments. Virtually every matter covered in the Joint Declaration Paragraph 6 may be today, in trade parlance, “trade-related.”

The language of “open markets” is ominous for the cultural sector. What we view as “culture,” our American neighbors view as “business.” What we view as “increasing diversity and choice,” they view as “erecting barriers.” Historically, “open markets” have brought cultural homogenization, not diversity. As just one Canadian example, U.S. movies typically take 90 per cent of Canadian box office revenues each year, and other foreign movies take most of the rest. Market share for Canadian English-language films hovers around an anemic one percent. French-language films struggle to exceed a 10 percent market share. Why? The principal reason is because Canada has never imposed content quotas as we have in television and radio. Because of the pressure of the U.S. major studios (and their governments), we have an “open market” when it comes to films. This seriously impedes our ability to tell our stories in this powerful medium.

One of the very few exemptions from the 1947 General Agreement on Tariffs and Trade, was for cinema screen quotas. At that time, cinematographic works were recorded and distributed on movie reels (a good). The Uruguay Round of GATT negotiations launched in 1986 expanded the concept of trade beyond goods, to cover services, investments and matters related to intellectual property rights. The new General Agreement on Trade in Services (GATS) was negotiated and the round concluded with the launch of the World Trade Organization in 1995.

During these negotiations, France introduced the concept of *l'exception culturelle* since the provisions being established affect cultural expressions. The core trade principles of National Treatment and Most-Favoured-Nation treatment *prima facie* significantly limit the right of states to introduce preferential measures to support their artists and cultural producers.

In the *Canada Periodicals Case* (1997) launched by the U.S., the WTO found that magazines were a good which contained services, and thus the provisions of both GATT and GATS applied. WTO found that Canadian and American magazines were “like goods” notwithstanding the huge editorial/storytelling differences. Despite the existence of the cultural exemption in the 1988 Canada United States Free Trade Agreement, the WTO found that some of Canada’s magazine policies violated trade rules.

The emergence of digital technologies has had a profound affect on the cultural industries. Virtually all works are now digitally recorded, produced, and available globally. Even books are widely available in electronic form. As evidenced by efforts to update the *Broadcasting Act*, and to support our struggling periodicals and newspapers, Canadian cultural policies have not kept pace with the changes brought about by the digital shift, particularly as it relates to the domination of our screens by streaming services.

Global agreements are increasingly tackling the digital economy, which is of serious concern to the cultural community. In its own consultation on whether Canada should join the Digital Economy Partnership Agreement, Global Affairs said DEPA “is a new type of international trade policy instrument” which “builds upon the digital trade or e-commerce chapters of existing free trade agreements, such as the (CPTPP), adding enhanced commitments on facilitating digital trade and multi-party cooperation on a range of advanced technologies.” It is important to recall that, at the last hour, Canada scrambled to address the potentially serious negative consequences for our cultural industries as the Trans Pacific Partnership became the CPTPP. There is no cultural exemption in CPTPP, and Canada’s cultural sovereignty is only minimally protected by Canada’s reservations and side letter approach.

**Given all of this, CDCE submits:**

1. As a precondition to the partnership negotiations, Canada must require that the cultural exemption in the Canada-United States-Mexico Agreement (CUSMA) be agreed by all parties. CUSMA Article 32.6(2) provides: “This Agreement does not apply to a measure adopted or maintained by Canada with respect to a cultural industry...”
2. That the cultural sector, including CDCE, must be consulted regularly and thoroughly as the APEP discussions move forward.
3. To the extent that the APEP addresses digital services/trade/regulations, negotiators should consider the nine recommendations made by the CDCE on September 23, 2022 in response to Global Affairs call for comments on A Model Canadian Digital Trade Agreement: [https://cdec-cdce.org/wp-content/uploads/2022/09/Submission\\_CDCE\\_Model\\_Global\\_Affairs\\_13092022.pdf](https://cdec-cdce.org/wp-content/uploads/2022/09/Submission_CDCE_Model_Global_Affairs_13092022.pdf)

All of which is respectfully submitted.