

Comments from the Coalition for the Diversity of Cultural Expressions as part of the

Consultations on a possible free trade agreement with Thailand

submitted to

Indo-Pacific Trade Policy Division

Global Affairs Canada

Presentation of the CDCE

The Coalition for the Diversity of Cultural Expressions (CDCE) brings together the leading francophone and anglophone professional organizations of Canada's cultural sector. It is composed of about fifty organizations representing the collective interests of more than 350,000 creators and cultural professionals, as well as 3,000 companies active in publishing, film, television, new media, music, performing arts, and visual arts. The CDCE speaks with a unified voice, following consultation with its members.

Concerned both with the economic vitality of the cultural sector and the flourishing of cultural creation, the CDCE works primarily to ensure that cultural goods and services are excluded from trade negotiations and that the diversity of cultural expressions is safeguarded within the digital environment.

It actively promotes the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions ("the 2005 Convention") and monitors its implementation to ensure it has full effect at the national level. The CDCE strives to preserve the government's ability to adopt and implement policies that support national and local cultural expressions and to ensure that trade liberalization and technological change do not lead to the uniformity of content or the destabilization of local ecosystems in the face of foreign investment. The CDCE also serves as the secretariat of the International Federation of Coalitions for Cultural Diversity (IFCCD).

1. Introduction

For more than 25 years, the CDCE has amplified the voice of Canada's cultural sector to ensure the protection and promotion of the diversity of cultural expressions. Throughout this work, it has relied on the Government of Canada's strong commitment to exclude cultural goods and services from its trade agreements.

In December 2025, the Government of Canada launched [public consultations](#) on a possible free trade agreement with Thailand.

The CDCE thanks Global Affairs Canada for holding this consultation, which provides an opportunity to contribute to discussions on these potential agreements.

Our comments and recommendations focus primarily on the need to include a general cultural exemption clause in any potential free trade agreement. Such an exemption is essential to preserve Canada’s sovereign right to adopt measures and policies aimed at protecting and promoting the diversity of cultural expressions within its territory. In the absence of such an exemption, commitments undertaken in trade agreements could limit Canada’s ability to support its cultural expressions, particularly in the digital environment. Given current market dynamics, these expressions could then be overshadowed by cultural goods and services from other countries. This is why maintaining a clear and well-drafted cultural exemption remains indispensable in Canada’s trade agreements.

Moreover, the widespread digitization of the cultural economy calls for heightened vigilance: provisions relating to digital trade or artificial intelligence that are increasingly included in trade agreements must never have the effect of restricting Canada’s ability to protect and promote its cultural industries.

After recalling Canada’s commitment to the diversity of cultural expressions and underscoring the importance of protecting culture in the digital space, including its commercial dimension, we will put forward specific recommendations regarding these potential agreements. While the CDCE recognizes that this consultation has a broad scope extending beyond culture, it reiterates its interest in remaining engaged in subsequent stages.

2. Canada’s Commitment to Protecting the Diversity of Cultural Expressions in Trade Agreements

2.1. The Importance of the Diversity of Cultural Expressions

The treatment of cultural goods and services at the international level has evolved significantly since the late 20th century, shifting from a purely commercial logic to an approach aimed at protecting and promoting cultural diversity. This new vision led States to turn to UNESCO to establish an international legal framework. The objective was no longer to view cultural diversity as an obstacle to trade, but as a richness to be preserved in accordance with the principles of cultural law. It was in this context that UNESCO adopted the 2005 Convention. In force since 2007, the Convention lies at the heart of the creative economy and plays a regulatory role at the interface between trade and culture.

The adoption of the 2005 Convention marked the culmination of efforts undertaken by the governments of Canada and Quebec, as well as by civil society. It constituted a strong affirmation of the fundamental role of culture in our societies. Canada was the first country to ratify the Convention and has since acted as a true leader in the protection and promotion of

the diversity of cultural expressions. Today, 157 States, along with the European Union, are Parties to the Convention.

Cultural expressions embody our identities, convey our values, and carry meaning. They allow us to share our worldview, to make it known, and to allow it to evolve. Rich in their diversity, they are a fundamental driver of sustainable development. By fostering human rights and social inclusion, cultural expressions help interpret our past and imagine the future. They inform us, entertain us, and constitute an invaluable collective heritage.

This is why governments in Canada have, over the decades, adopted ambitious cultural policies and legislation that have enabled the emergence of a multitude of talents and cultural enterprises at the national level.

According to a recent survey, Canadians are strongly attached to Canadian cultural content and support federal government action in this area: 91% of Canadians believe it is important to protect Canadian culture and identity, particularly in the face of U.S. influence, and 83% support increased investment in television, film, and digital content production to ensure high-quality productions for domestic and international audiences. Furthermore, 86% of Canadians believe that the government should actively support cultural and creative industries through direct funding and tax credits¹.

2.2. Canada's Obligations as a Signatory to the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions

Among its key provisions, Article 1 of the 2005 Convention establishes the objective of “recognizing the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning.” This affirms the principle set out in the preamble that such activities, goods, and services “have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value².” The Convention also enshrines, in Article 5, the sovereign right of Parties to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.

While the Convention does not prevail over other treaties, nor establish any hierarchy between itself and other legal instruments, it nonetheless imposes clear obligations on States Parties. Under Article 20, Parties must take the Convention's obligations into account when interpreting and applying other treaties, or when assuming new international commitments.

¹ Canadian Media Producers Association (CMPA), *New poll finds majority of Canadians support political parties that champion Canadian identity and Canada's cultural industries*, April 14 2025, <https://cmpa.ca/pressreleases/new-poll-finds-majority-of-canadians-support-political-parties-that-champion-canadian-identity-and-canadas-cultural-industries/>.

² UNESCO, *Convention on the protection and promotion of the diversity of cultural expressions*, 2005, <https://unesco.org/creativity/convention>.

Article 21 further encourages Parties to promote the Convention’s objectives and principles in their other international engagements.

All States face challenges in adapting their legislation to the realities of the digital environment. In its Operational Guidelines on the Implementation of the Convention in the Digital Environment, the Conference of Parties to the 2005 Convention recommends promoting “the possibility of introducing cultural clauses in bilateral, regional, or multilateral international agreements—provisions that take into account the dual nature of cultural goods and services, including preferential treatment clauses, with particular attention to the status of electronic commerce, which should recognize the specific nature of cultural goods and services.”

It should however be recalled that Thailand is not Party to the 2005 Convention.

3. A shared necessity and willingness to support cultural expressions in Canada

The protection, promotion, and sustainability of cultural expressions require active support through the adoption of structural measures, whether legislative, regulatory, or financial. Contrary to the idea that quality content will naturally find its place in the market, numerous examples demonstrate that purely commercial logic is insufficient to ensure the viability of national culture. In Canada, this reality was underscored by the Broadcasting and Telecommunications Legislative Review Panel in its January 2020 report:

For 40 years, Canadian broadcasting policy has supported the production of television drama, even though this measure makes no sense from a strictly economic standpoint. Drama (including scripted comedy) is the most popular television genre, but also the most expensive to produce. The Canadian rights to a U.S. television drama—which can cost three to four million dollars per hour to produce, largely financed by U.S. networks—can be purchased for a few hundred thousand dollars. By contrast, producing an English-language Canadian drama costs between one and three million dollars per hour. Yet to finance this content, the Canadian network must pay a high licensing fee that exceeds expected advertising revenues. The result: the market will not produce Canadian drama unless it is supported by government cultural policy measures³.

This example from the audiovisual sector resonates across all cultural disciplines. For instance, Canada’s book sector operates in a domestic market characterized by strong competition from European and U.S. imports and by an overly broad interpretation of a copyright exception in certain educational institutions (with the exception of Quebec). Despite these challenges, the sector has earned recognition for the quality of its output and the domestic and international

³ Innovation, Science and Economic Development Canada, Canada’s communications future: Time to act. Final Report, January 2020, <https://ised-isde.canada.ca/site/broadcasting-telecommunications-legislative-review/en/canadas-communications-future-time-act>

reach of Canadian authors whose works are translated and read worldwide. This success is made possible through government investments in programs such as the Canada Book Fund and the Canada Council for the Arts, which support the national and international marketing of books published by Canadian-owned publishers.

Even in countries where the domestic market, global influence, and philanthropic sector could theoretically be sufficient to support culture, various measures are nevertheless adopted to sustain the vitality of their cultural ecosystems. As Olivier Henrad has noted: “No cinema from any country in the world, regardless of the talent of its creators, has ever survived without the help of a strategic — and therefore interventionist — state that fully understands the key role this art form plays in its economic sovereignty, its cultural sovereignty, and its power of influence on a global scale⁴.”

It is crucial that Canada and Thailand join efforts to support cultural expressions and ensure their protection within their respective territories, while maintaining a balanced and respectful trade dialogue that upholds international commitments, when applicable, notably through the adoption of a general cultural exemption in the digital environment.

4. The essential role of the cultural exemption clause in Canada’s trade agreements

In Canada, the inclusion of a cultural exemption clause in trade agreements dates back to the negotiations of the Canada–United States Free Trade Agreement in 1988. Without revisiting the historical evolution of this approach in detail⁵, it should be recalled that Ottawa has traditionally adopted a general cultural exemption to exclude cultural industries from the scope of its trade agreements. This practice, which has become a cornerstone of Canada’s trade policy, has been maintained in most agreements concluded since 1988.

It should be noted, however, that the Comprehensive Economic and Trade Agreement (CETA) and the CPTPP marked a departure from this tradition. Rather than including a general cultural exemption, Canada opted for specific reservations limited to certain chapters. In the case of the CPTPP, this approach resulted in significant concessions, particularly in the chapter on electronic commerce, which does not contain a specific cultural reservation⁶.

⁴ Henrad, Olivier, *Cinéma et régulation : « Les choses qu’on dit, les choses qu’on fait » Commentaire*, Numéro 189(1), 133-143. March 11, 2025, <https://doi.org/10.3917/comm.189.0135>

⁵ See the CDCE comments: CDCE’s recommendations on Canada’s Future World Trade Organization (WTO) Negotiations on E-Commerce, April 26, 2019, <https://cdce-cdce.org/en/publications/cdces-recommendations-on-canadas-future-world-trade-organization-wto-negotiations-on-e-commerce/>.

⁶ See the CDCE comments: *Consultation on FTA negotiations with the United Kingdom and its possible accession to the CPTPP*, April 27, 2021, <https://cdce-cdce.org/en/publications/consultation-on-fta-negotiations-with-the-united-kingdom/> & *Comments from the CDCE in the context of the consultation on Future accession negotiations of the CPTPP*, August 26, 2019, <https://cdce-cdce.org/en/publications/comments-from-the-cdce-in-the-context-of-the-consultation-on-future-accession-negotiations-of-the-cptpp/>.

In the absence of a general cultural exemption, foreign digital programming services subject to Canadian content rules or other requirements to implement cultural policy could allege discriminatory treatment, underscoring the importance of including such an exemption.

Accordingly, with respect to a possible free trade agreement with Thailand, the CDCE strongly recommends adopting an approach consistent with Canada's historical position, namely the inclusion of a general cultural exemption clause applicable to the agreement as a whole.

5. Key points of vigilance in Canada's trade negotiations

5.1 The definition of cultural industries

The definition of cultural industries used by Canada to exempt them from trade commitments has evolved very little over time. Codified in Article 32.6 of the CUSMA⁷, the cultural exemption adopts the definition of cultural industry as first used by Canada⁸ in the Canada–United States FTA of 1988:

Article 32.6: Cultural Industries

1. For the purposes of this Article, “cultural industry” means a person engaged in the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale, or exhibition of film or video recordings;

(c) the production, distribution, sale, or exhibition of audio or video music recordings;

(d) the publication, distribution, or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services

Maintaining this definition of cultural industries, despite transformations in cultural industries, products, and services, presents several advantages.

⁷ *Canada–United States–Mexico Agreement*, 30 November 2018 (entered into force: 1 July 2020) [CUSMA], Article 32.6(1).

⁸ Gilbert Gagné, « Le traitement des produits culturels et la clause d'exemption culturelle dans l'ALÉNA et l'ACÉUM » (2022) 1143 RQDI 179 à la p 189.

First, it demonstrates the Canadian government's consistent commitment to protecting its cultural industries. Second, it ensures coherence across Canada's various trade agreements. Third, in the event of a dispute, this approach would favour an evolutionary interpretation of cultural industries that could encompass contemporary forms of cultural products and services. Moreover, this definition is consistent with that used by the Canadian government under the Investment Canada Act, which significantly reinforces the technologically neutral interpretation that has prevailed for more than 40 years.

That said, Canada may wish to revisit this definition. The CDCE is actively reflecting on this issue and, at this stage, does not take a position either in favour of or against such a revision.

The CDCE nevertheless raises important reservations. Should the current definition of cultural industries be revised, it would be essential that it encompass at least the elements currently included in Canada's traditional definition.

Canada should also ensure that any new definition does not invalidate or limit the scope of the existing definition, including in the context of digital trade. Any potential redefinition should aim solely to clarify the original scope, not to narrow it.

Finally, the CDCE emphasizes the importance of consulting representatives of the cultural sector should a new definition be discussed in the context of these negotiations.

5.2. Protecting Cultural Sovereignty in the Digital and Artificial Intelligence Era

The rapid development of digital technologies and online distribution models has profoundly transformed cultural ecosystems. These changes affect the creation, dissemination, and discoverability of content, challenging States' ability to protect and promote their cultural expressions.

The CDCE closely monitors these transformations. It highlights their impacts and proposes concrete avenues for action to preserve Canada's cultural sovereignty. In October 2025, for example, it published proposals addressing the priority concerns of its members, including recommendations related to broadcasting, copyright, and transformations linked to generative AI⁹.

In recent years, Canada has undertaken major legislative reforms to address these challenges. In 2023, the adoption of the Online Streaming Act (S.C. 2023, c. 8) notably assigned a central role to the CRTC: ensuring that audiovisual and audio streaming services and social media platforms, like traditional media, contribute to the creation, production, and promotion of

⁹ CDCE, *Committing to Canada Cultural Sovereignty, Priority issues for the cultural sector*, October 6, 2025, <https://cdce-cdce.org/fr/publications/enjeux-prioritaires-culture-canada/>

Canadian¹⁰ and Indigenous music, programs, and films. This legislation received the support of a wide range of Canadian and Indigenous organizations. The reform illustrates Canada's renewed determination to assume a leadership role in protecting and promoting the diversity of cultural expressions. By strengthening the Broadcasting Act, Canada is consolidating a dynamic domestic market that contributes to social vitality and offers a wide diversity of creators the opportunity to express themselves and be discovered, both domestically and internationally.

In the area of copyright, consultations were held in 2021 on “a modern copyright framework for online intermediaries,” aimed at ensuring that the Copyright Act reflects modern realities and that web giants share revenues more equitably with Canadian creators¹¹. In 2024, a new consultation specifically addressing copyright in the age of generative artificial intelligence led to the publication of consensus-based recommendations¹² by Canada's cultural sector.

In light of the global disruptions brought about by generative artificial intelligence, the CDCE welcomes the fact that Canada's Copyright Act is based on an “opt-in” system, under which authorization from rights holders is required to use protected works, sound recordings, and performances. By contrast, some countries have introduced exceptions—of varying scope—allowing the use of protected works for the training of generative AI technologies (text and data mining) under certain circumstances and conditions, such as an “opt-out” system, approaches that have proven highly controversial. Such approaches risk undermining the development of market-based solutions that preserve the right to authorize or refuse use of works and that ensure fair remuneration for creators and rights holders. This is why many countries, including Australia, have rejected this approach¹³.

It should also be noted that legislative frameworks governing artificial intelligence remain emergent and evolving. Canada has not yet adopted an artificial intelligence law, despite an attempt initiated in 2023 with Bill C-27, which has since died on the Order Paper. Members of the CDCE continue to hope, in particular, for the adoption in the near term of legislation that includes provisions on transparency regarding the works and other copyright-protected subject matter used by generative AI systems to train such systems.

¹⁰ CDCE, *Release: The future of Canadian culture in the hands of Senators*, November 8, 2022, <https://cdce-cdce.org/en/publications/bill-c-11-the-future-of-canadian-culture-in-the-hands-of-senators/>.

¹¹ Government of Canada, “The Government of Canada Launches Consultation on a Modern Copyright Framework for Online Intermediaries”, Canadian Heritage, April 14, 2021, <https://www.canada.ca/en/canadian-heritage/news/2021/04/the-government-of-canada-launches-consultation-on-a-modern-copyright-framework-for-online-intermediaries.html>

¹² CDCE, *Generative AI: CDCE's recommendations to protect and promote the diversity of cultural expressions*, 15 January 2024, <https://cdce-cdce.org/en/publications/generative-ai-recommendations/>

¹³ CDCE, *Comments from the CDCE as part of Sprint national – next chapter of Canada's artificial intelligence leadership*, November 3, 2025, <https://cdce-cdce.org/en/publications/sprint-national-next-chapter-of-canadas-artificial-intelligence-leadership/>

It is imperative that Canada preserve its full policy space in this regard. A recent article published in *The Logic*¹⁴ clearly underscores why heightened vigilance is required, as it reported that U.S. technology companies are pressuring their government to ensure that its trade agreement with Canada and Mexico includes a “carve-out to let AI developers train their models on copyrighted material without having to consult or compensate rights holders”.

Canada’s ability to protect its cultural ecosystem rests on a fundamental condition: recognition of its sovereign right to protect and promote its cultures in accordance with their specificities, without this capacity being compromised by digital trade governance mechanisms.

6. Conclusion

In a globalized digital environment marked by a tendency toward content homogenization, the diversity of cultural expressions and the affirmation of cultural sovereignty, as enshrined in the 2005 Convention, cannot be confined to strictly national actions. International cooperation therefore emerges as an essential lever.

Cooperation between Canada and Thailand represents a strategic lever for promoting digital governance that respects cultural rights and values cultural diversity. To consolidate this convergence, the CDCE recommends that the proposals set out in this submission be incorporated into the development of any future trade agreements with these partners.

¹⁴ Hemmadi, Murad, *U.S. tech groups want to use USMCA to end the AI copyright fight*, 16 janvier 2026, <https://thelogic.co/news/usmca-ai-groups-copyright/>