



UK Coalition for Cultural Diversity

FREE TRADE AGREEMENTS UK – CANADA

Briefing for Ministers from the UK Coalition for Cultural Diversity (UKCCD)

The UKCCD promotes the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005* and represents the interests of the book, film, television, new media, music, performing arts and visual arts sectors.

The economic significance of the creative industries is equal to that of the financial sector in the UK in its contribution to GDP. Currently employing 144,000 people, the creative sector provides jobs for only fourteen thousand less than the automobile industry.

However, the significance of creative industries goes far beyond economic considerations. Creative industries are vital to the identity, autonomy and social cohesion of our country. Beyond our borders they are critical to UK's global strategy both for trade and soft power: the expansion of both depends on our prestige in exporting our creative works and the development of a robust protection of intellectual property rights.

A comprehensive cultural exemption is needed in any trade agreement with another country or group of countries in order to safeguard and develop the British cultural industries. Such an exemption would ensure that the British Government is free to adopt measures on behalf of the creative industries and Internet platforms in a way which would be of benefit to the United Kingdom. It is also important to have the freedom to introduce the proposed provisions of the Online Harms Bill or any revision to the 2003 Communications Act. Culture is not a commodity which can be traded in the same way as tangible goods.

Below please find 6 recommendations with their justification in Annex 1.

Recommendation 1

It is essential that the measures in the Canada Trade Agreement should not apply to the cultural industries. The Agreement should recognise the UK's cultural sovereignty and the special place that culture plays in the life of our nation. In this respect there should be reference in the agreement to the UNESCO Convention 2005 which both Canada and the UK have ratified.

Recommendation 2

Given the frequently used definition of and reference to digital products, which explicitly include cultural content, the agreement should state that this type of trade

provision does not apply to the cultural industries. The UK Government must be in a position to exercise its cultural sovereignty with regard to regulation of the media/Internet on behalf of the cultural industries and the British people.

Recommendation 3

The UK should not make commitments that would limit its ability to protect copyright. In addition, there should be nothing to prevent the UK Government from requiring foreign companies to provide data as part of their public policy obligations. As data and artificial intelligence continue to evolve rapidly, it would be helpful for the Government to consult with the cultural sector on the specific clauses that are up for negotiation.

Recommendation 4

It is important that the parties to a possible agreement formulate liberalization commitments in the form of a positive list, i.e. the agreement will apply only to the sectors they identify and within the limits that states may wish to formulate.

Recommendation 5

The UK should be able to collect taxes or other contributions, including those aimed at financing cultural content, from companies engaged in digital activities, and that the UK protects its sovereign authority to define the conditions of access to any funding for culture.

Recommendation 6

The trade agreement should not prevent current and future state-owned companies operating in the cultural sector.

Definition of the Cultural Sector

If the definition of cultural industry traditionally used by the UK were to be replaced, it would be helpful if the Government consulted representatives from the cultural sector. The definition to be used for the application of the cultural exemption needs to be technologically neutral and meet the following criteria:

The definition should include publishing of books, magazines, periodicals, and newspapers together with audio-visual. Audio-visual incorporates films or video recordings, audio or video music recordings, musical compositions, radio communications, all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services. The essential cultural activities of publication, production, distribution, sale, exhibition and publishing must also be included the any trade agreement.

In order to ensure technological neutrality, the definition should not specifically define the formats used for the production and access to cultural expressions and should allow the inclusion of cultural expressions using new technologies (virtual reality, augmented reality, artificial intelligence, etc.).

The UK Coalition for Cultural Diversity (UKCCD) hopes that a possible bilateral agreement between the UK and Canada refers to the UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Furthermore, the

protection and promotion of the diversity of cultural expressions should be clearly identified as a legitimate policy objective for which the state has a right to regulate.

Annex One

Justifications for Recommendations

Recommendation 1

A Reference to the 2005 Convention

The preamble above refers to UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions in 2005. It was conceived as a tool to protect cultural diversity and cultural sovereignty in a context of increasing economic liberalization. Under Article 21 of the Convention, "the Parties undertake to promote the objectives and principles of the Convention in other international fora. To this end, the Parties shall consult each other, as appropriate, bearing in mind these objectives and principles. Canada and the United Kingdom are both parties to this Convention.

The CETA has included a reference to the Convention in the preamble of the agreement, as well as a passage recognizing the protection and promotion of the diversity of cultural expressions as one of the "legitimate policy objectives" for the implementation of regulations alongside other objectives (public health, environment, safety, public morals)[1]. This seems to us to be an excellent practice since, in the event of litigation, it would provide additional protection for cultural expressions.

Recommendation 2

Exclusions to be made in relation to digital trade

Trade negotiations now include articles/commitments regarding digital trade. The UK government needs to maintain sovereignty to make new laws in the digital sphere in order to protect and promote our culture and achieve other aims as in the Online Harms Bill.

These are typically articles dealing with the non-discriminatory treatment of digital products (which include digital books, videos of all kinds, sound recordings, etc.)[2]. It is understood that the global cultural exemption clauses also apply to these provisions. However, given the sometimes explicit reference to cultural content in the definitions of digital products, it would be prudent to make it clear that the article in question does not apply to cultural industries.

Recommendation 3

Do not make any other commitments that may have an impact on culture

In addition, the UK should not agree to enshrine copyright exceptions in a trade agreement, which would prevent it from adopting new measures or modifying existing ones.

In the context of any revision of UK law, one would not wish to create obstacles to the accountability of intermediaries, particularly platforms that distribute user-generated content, for the distribution of content.

Online programming companies collect a lot of data on who subscribes to or uses their services. As we have seen, recommendation algorithms fuel this data and allow companies to guide users to specific content based on particular interests. This wealth of data is rigorously guarded by these companies for whom they represent a source of fundamental wealth[3]. However, there may be a case for requiring companies to share anonymized data, for example, to ensure compliance with cultural policy requirements. Source code provisions could limit this access to information and any privacy strategy.

Other types of provisions could create obstacles to the implementation of digital rights management tools, or technological protection measures, to protect copyright.

Recommendation 4

Positive list

Technological developments should not be used as a pretext to further liberalize, now or in the future, a potentially infinite set of goods and services. Indeed, digital products and services are called upon to reach every corner of people's lives. A piece of music listened to on an online platform remains a cultural content with value and meaning, just as a health service, provided digitally, remains a health service that must be framed as such.

Recommendation 5

Market access and non-discrimination

National treatment rules (non-discriminatory treatment of digital products) would most severely limit the ability of the UK government to exercise its cultural sovereignty. While the UK wishes to adopt new policies in the digital environment, these rules would prevent it from adopting measures to promote the discoverability of UK content, or even requiring a certain percentage of UK works on online platforms. This would conflict with the following: The UK has a recently updated its laws to demand that 30% of relevant streaming platform's catalogues are constituted from local audiovisual production and must be given due prominence.

Subsidies, taxation power

The UK must retain its ability to raise funds from companies involved in digital activities in the cultural sector, whether in the form of taxes or contributions to the financing of cultural content. It must also be able to decide that the funds raised to meet this objective, as well as government subsidies are accessible to British citizens only.

Recommendation 6

The UKCCD expects that public organisations, particularly those in the culture and media sector such as the BBC, will not be affected by trade negotiations.

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