
**ACTRA SUBMISSION
TO GLOBAL AFFAIRS CANADA
ON THE RENEGOTIATION OF THE
NORTH AMERICAN FREE TRADE AGREEMENT**

July 18, 2017



RENEGOTIATING THE NORTH AMERICAN FREE TRADE AGREEMENT A CULTURAL PERSPECTIVE

1. In renegotiating the North American Free Trade Agreement, **the cultural exemption must be maintained and strengthened**. It should be strengthened by significantly changing the current definition of cultural industries and by eliminating the “notwithstanding” clause, which authorizes retaliation against measures “that would have been inconsistent with the agreement” if not for the exemption.
2. It is crucial for Canada to resist all efforts to import into NAFTA the cultural provisions of the Trans-Pacific Partnership Agreement (TPP). The TPP’s cultural provisions are by far the weakest protection that Canada has obtained in any of its trade agreements.

Who we are

This is the submission of ACTRA (Alliance of Canadian Cinema Television and Radio Artists) in response to the public consultations concerning the upcoming renegotiation of the North American Free Trade Agreement (NAFTA).

ACTRA brings to this process the perspective of 23,000 professional performers working in the English-language recorded media sector in Canada. For close to 75 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, sound recording, radio and digital media. The ACTRA Performers’ Rights Society (PRS) secures and disburses use fees, royalties, residuals and other forms of performers’ compensation. The ACTRA Recording Artists’ Collecting Society (RACS) administers the royalty and private copying levy due to performers from sound recordings.

Canada’s cultural policies have created successful cultural industries

Since the early 1950s, Canadians and their governments of all political stripes have embraced the premise that if Canada is to have a vibrant arts and culture sector, Canadian governments have an essential role to play. Over the decades, Canada has developed among the most comprehensive cultural policies in the world.

The objective of our cultural policymaking is to support Canadian artists and cultural producers in their mission to tell our stories and bring our perspectives to audiences. It has never been exclusionary; Canada remains one of the most open markets in the world for the cultural productions of others. Our cultural policymaking is about ensuring our storytellers have the capacity and opportunity to bring high-quality works to the market; and ensuring that audiences, in Canada and abroad, have access to these works.

Even with the challenges of the digital world, our policies remain effective, and Canada’s film and television industry is thriving. There is a healthy mix of service and domestic production. People

are working. According to Profile 2016,¹ total film and television production in Canada was \$6.8 billion in the reported year (mix of data from 2016 and 2015) and this represented 140,600 full-time equivalent jobs. While production volume declined by three per cent from the previous year, it remained close to 25 per cent higher than in 2011. Canadian content production, including that produced in-house by broadcasters, was \$4.1 billion of the total.

Canadian television programs are increasingly popular in Canada. Murdoch Mysteries, Motive, Saving Hope and Rookie Blue each regularly have drawn more than 1.4 million viewers. The mini-series Anne drew 2.1 million people during its recent premiere episode. The Rick Mercer Report, Heartland, Schitt's Creek and many others are well-established on the Canadian landscape.

Many of our television programs have audiences around the world. While our English-language programs have always found markets in other countries, we've seen growing interest in the United States. From Degrassi, Due South, Flashpoint, Rookie Blue, Killjoys to Wynonna Earp, Canadian shows receive significant exposure in the U.S. We recently celebrated Tatiana Maslany for the Emmy Award she received for her stunning performances in Orphan Black. International successes in children's and youth programming include the Degrassi series, The Next Step and Odd Squad.

According to Film L.A.'s annual study, 13 of the top 100 highest-grossing feature films released in 2016 were shot primarily in Canada.² While our filmmakers regularly receive international acclaim and major awards for their works, audiences are somewhat harder to find for Canadian movies, particularly in theatres.

Our film and television production industry is underpinned by a balanced range of government policy measures at the national, provincial and local levels:

- Canadian content rules that require those providing viewers with audiovisual content to ensure that Canadian works are included in the mix;
- Direct and indirect funding support that helps to level the playing field for Canadian producers against foreign competitors who have a tremendous competitive advantage. Producers in the United States, Britain, India and other countries can recoup their investment in their home market while Canadian producers cannot;
- Public institutions, including Canadian Broadcasting Corporation, Telefilm Canada and the National Film Board, and the public-private Canadian Media Fund;
- Support for training and professional development, including of the artists and technicians whose skills are essential to the industry;
- Requirements for our highly-successful media companies, which have grown under the protection of various preferential measures, to make reasonable financial contributions to Canadian content production;
- Investment rules that protect Canadian firms; and
- Preferential copyright rules.

¹ [Profile 2016](#), CMPA in association with the Department of Canadian Heritage, Telefilm Canada and AQPM, prepared by Nordicity Canada;

² *13% of top grossing films shot in Canada*, Jordan Pinto, Playback, May 25, 2017;

Similar measures have been implemented in other cultural industries, including writing and publishing, music, crafts and design as well as for the visual and performing arts.

Cultural policies come into conflict with trade agreements

ACTRA's involvement in trade issues stretches back to 1986 when Canada launched free trade negotiations with the United States, and the General Agreement on Tariffs and Trade (GATT) launched its eighth round of multilateral trade talks in Uruguay (this created the World Trade Organization (WTO)). GATT covers trade in goods and, when it was signed in 1947, cinema screen quotas were explicitly exempted from the agreement. But, concerns about the effects of "free trade" on cultural policymaking began to arise more seriously in 1986 as negotiations launched that year included issues related to trade in services and trade-related investment measures.

Trade agreements concluded since 1986 typically establish rules not only for the physical good, including the book, CD, magazine or film, but also for the services contained in that good, whether they are provided by a writer, musician, dancer, performer or director. These agreements also protect foreign investors and some limit what public service institutions can do.

There is no doubt that many of Canada's cultural policies violate basic principles of global trade agreements. For example, measures that give preferential treatment to Canadian artists, producers and investors are non-compliant with national treatment obligations. Some broadcasting regulations may be contrary to market access rules. By their very nature, coproduction treaties violate most-favoured-nation provisions.

In the leading international case on cultural policies, Canada's magazine support measures were found in 1997 to be in violation of various WTO provisions. The WTO ruled that Canadian and U.S. magazines were "like goods" (despite the fundamental differences in editorial content) and that both the good (the magazine) and the services it contains (the writing, advertising, design, etc.) are covered by the trade rules. Since the ruling, Canada has been forced to limit magazine support measures primarily to financial subsidies for domestic magazines, since subsidizing domestic producers is permitted under WTO and other trade agreements.

Protecting cultural policymaking space

Faced with these challenges, Canada's arts and culture community together with successive Canadian governments, both Liberal and Conservative (and with support from other parties in Parliament), have been at the forefront of efforts to exempt culture from the provisions of trade agreements, both bilaterally and multilaterally. This is essential to ensuring we have the ability to maintain and adapt existing measures, and to implement new cultural policies as required, from content rules to investment measures to funding programs, to help our own artists and cultural industries thrive and succeed in the globalized and digital world.

Over the past 30 years, we have had some success in this effort. Canada has negotiated cultural exceptions or exemptions that, while far from perfect, are generally robust and protect most existing measures. The strongest are those that appear in the General Exceptions provisions,

alongside other key public interest areas, such as public safety, national security, health, environmental protection, etc. This pattern of successful negotiation of cultural exemptions came to an end for Canada when it agreed to the Trans-Pacific Partnership Agreement in 2016.

Canadians were also at the forefront of the campaign to develop the UNESCO *Convention on the protection and promotion of the diversity of cultural expressions*. Distinguished Canadian actor R.H. Thomson represented ACTRA at important international meetings in 2001-02 where the Convention concept was developed and elaborated. The Convention seeks to confirm the right of governments to implement cultural policy measures and to promote international cultural cooperation. Since it was adopted in 2005, 144 states as well as the European Union have ratified the Convention, which is both extensive and occurred remarkably quickly for what was initially a controversial proposal.

NORTH AMERICAN FREE TRADE AGREEMENT

In 1987, Canada and the United States agreed on the Canada-United States Free Trade Agreement (CUSFTA). On January 1, 1994, that agreement was effectively superseded when NAFTA came into effect between Canada, the United States and Mexico. However, it is important to cite CUSFTA because the NAFTA cultural exemption is included only by reference to CUSFTA.

NAFTA's Article 21 outlines the exceptions from the Agreement and Article 2106, on cultural industries, points to this Annex.

"Annex 2106 – Cultural Industries

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. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States."

Thus, one must look back to CUSFTA to see that Article 2005, paragraph 1, provides that "Cultural Industries are exempt from the provisions of this Agreement, except (for specific changes to certain policy measures)." The next paragraph 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."

NAFTA's Article 2107 provides the definition of Cultural Industries.

"Article 2107 Cultural Industries

Cultural industries means persons engaged in any of the following activities:

- (a) 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;”

ANALYSIS OF NAFTA CULTURAL PROVISIONS

In 1985, with the sole exception of certain GATT provisions respecting trade in goods, Canadian governments had a largely unhindered ability to develop and implement cultural policies. With the agreement to CUSFTA and NAFTA, we erected a box around the cultural industries and agreed that if a sector fell outside that box, it would be subject to the disciplines of the agreement. For example, the visual and performing arts are not included in the definition in part because, beyond subsidies, there were no measures that targeted the sector in 1986. Videogames, a sector that has emerged since, may also fall outside the definition despite the fact the content of a videogame reflects the norms and culture of the society in which it is produced. While we have not to-date considered cultural policy regulations in these sectors, we may already be precluded from ever developing such regulations. We could certainly expect a challenge if we did.

It has been unclear for 20 years whether “machine readable form” is sufficient to include the computer-based production and distribution of a wide-variety of cultural expressions. The Internet, of course, is rapidly becoming the dominant medium for the distribution of audiovisual, text, music and other cultural works.

The “notwithstanding” clause was opposed by many in the cultural sector when it was first announced. It authorizes retaliation, with few limits, and provides no opportunity to challenge countervailing measures. Effectively, it sends a powerful signal that future measures should be consistent with the agreement’s rules despite the exemption. This has led to a kind of self-censorship among Canadian cultural policymakers, who have sought to look for a policy solution that is “NAFTA compliant” and thus would avoid triggering the retaliatory provision. Often, the only solution is simply to provide public resources since subsidies are generally considered to be compliant, while the most sustainable solution may be a new law, regulation or other structural measure.

Canada has had two experiences with the notwithstanding clause.

In 1984, the CRTC authorized cable companies to make the U.S. Country Music Television (CMT) channel available to Canadian subscribers. The rules at the time were explicit that, if the CRTC subsequently licensed a directly-competitive Canadian service, this authorization could be revoked. In June 1994, the CRTC licensed New Country Network, a Canadian-owned service, and removed the authorization for carriage of CMT effective January 1, 1995. After efforts to overturn

this decision failed in Canadian courts, the United States launched an investigation, which quickly escalated to threats of retaliation. Washington's rumoured list of targets included Canadian media companies with interests in the United States as well as seemingly random products that were likely chosen for greatest political effect, including maple syrup, bacon and fur coats. The cost of the retaliatory measures would be substantially more than the estimated value of CMT at the time. The dispute was resolved when CMT and New Country Network reached a commercial agreement under which they launched CMT (Canada) with the Canadian partner holding a sufficiently large ownership stake to permit licensing as a Canadian service.³

The second dispute began in December 1994 when Canada announced it would impose an 80 per cent excise tax on advertising revenues obtained by U.S. split-run magazines. These are magazines that publish a Canadian edition with a small amount of local content as well as sell advertising space in Canada. While the importation of split-run magazines had been banned for many years, developing technologies allowed Sports Illustrated to circumvent this prohibition by printing its Canadian edition in Canada. Once again, the U.S. launched an investigation and there was talk of retaliation, but only briefly, since the U.S. decided to take the case to the World Trade Organization. As noted above, the United States won its challenge against the Canadian magazine support measures in 1997.

RENEGOTIATION OF THE NAFTA CULTURAL PROVISIONS

The three parties have agreed to renegotiate NAFTA, and this process will be launched in the coming months. Some argue NAFTA needs to be "modernized," others are looking for "tweaks." Whatever the process is called, it is highly probable that cultural issues will be on the table. They always are when Canada negotiates trade with the United States.

ACTRA anticipates the U.S. will seek to constrain Canada's cultural policymaking. On June 12, the Motion Picture Association of America was explicit in its objective for a renegotiated NAFTA:

"Canada carved out the cultural industries from the scope of their NAFTA obligations This means that the U.S. cultural industries, including the U.S. motion picture and television industry, do not benefit from the market opening disciplines ..., while Canadian industries have full access to the U.S. market. The NAFTA is the only U.S. trade agreement currently in force that includes a cultural carveout.... Such a carveout is inconsistent with the principles of free and fair trade. Cultural promotion and open markets are compatible and complementary. MPAA is committed to the promotion and protection of cultural diversity and firmly believes that NAFTA parties in the modernization negotiations can effectively rely on the flexibilities built into free trade agreements, including permissible support programs, to promote their cultural interests."⁴

In renegotiating NAFTA, ACTRA urges the government to ensure:

³ [Culture and Trade: An Analysis of Four Culture/Trade Disputes under NAFTA and the WTO \(53-63\)](#), Nancy A. Lyzaniwski, April 2000;

⁴ [MPAA Comments to the USTR on NAFTA Modernization, Motion Picture Associations of America, June 12, 2017;](#)

- 1. the broad, general exemption for culture, contained in the general exceptions article, is retained;**
- 2. the notwithstanding clause is eliminated. If culture is exempt, then future policy measures should be judged only for their efficacy and effectiveness, and not against trade liberalization commitments taken by the parties; and**
- 3. the definition of what is covered by the cultural exemption be updated and written in a way that will ensure all current sectors and media as well as any future medium used for the production or distribution of artistic expressions are included.**

With respect to the definition, ACTRA believes a contemporary definition would put the artist and creative expression at its heart. The UNESCO Convention could be the guide:

- “Cultural expressions” are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content;
- “Cultural content” refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities; and
- “Cultural goods and services” embody or convey cultural expressions, and may have both a cultural and commercial value. The precise form of their medium of production or dissemination is irrelevant to their existence as cultural expressions.

Copyright

ACTRA also expects the United States will seek to update NAFTA’s Intellectual Property provisions. For many years, ACTRA has advocated for the modernization of Canada’s Copyright Act to provide additional protections for artists: to ensure they can control the use of their works in the digital environment and can be fairly compensated when their works are made available to audiences.

With respect to copyright issues likely to be raised in the negotiations, ACTRA takes the following positions:

- ACTRA would support an extension to the term of copyright protection by increasing it to the life of the artist plus 70 years after the year of death. This is becoming the new international standard and is the practice in the most highly-developed economies.
- With respect to the liability of Internet Service Providers (ISP), which facilitate the unauthorized use of copyright works, ACTRA would support replacement of Canada’s current “notice-and-notice” provision. Currently, when a copyright owner advises an ISP that a subscriber is circulating a copyright work without their permission, that ISP must pass along the notice to the subscriber and retain records in case of a legal action. ACTRA supports a stronger provision that would require the ISP to take down the unauthorized material unless the subscriber can prove they have the necessary legal right to make it available. This is known as “notice-and-takedown.”
- ACTRA opposes the U.S. concept of “fair use.” ACTRA would thus vigorously oppose any further changes that would expand the scope of Canada’s “fair dealing” provisions. ACTRA

submits the most recent changes to Canada's Copyright Act already went too far in the wrong direction by expanding what can be considered fair dealing.

THE TRANS-PACIFIC PARTNERSHIP AGREEMENT AND NAFTA

Along the way to the NAFTA renegotiating table, the current Canadian government signed the Trans-Pacific Partnership Agreement. ACTRA submits the provisions of the TPP provide the weakest protection for culture of any of Canada's trade agreements, including CUSFTA and NAFTA.

ACTRA would vigorously oppose all efforts to transpose TPP provisions into NAFTA. The sole exception would be to consider inclusion of the TPP's E-Commerce chapter, providing it is amended to remove all limitation of Canada's ability to regulate or tax Internet services that provide audiovisual or other artistic works to consumers.

ACTRA is fully aware the starting point for the United States at the NAFTA table will be TPP, despite the fact the Trump administration rejected the agreement. U.S. Commerce Secretary Wilbur Ross gave us advance warning of the challenge ahead when he recently said, "A card laid is a card played. And even though that hand [the TPP] is cancelled, when somebody has put something on the table in writing that is an agreed thing."⁵

Thus, it is essential we summarize our concerns about the TPP. ACTRA's detailed analysis of the TPP can be found [here](#).

Why TPP threatens Canada's cultural policies

1. A Reservation is not an Exception

The mechanism used to exempt Canada's cultural industries from various TPP obligations is to list existing non-conforming measures and specifically to reserve the right to implement policies related to culture in various TPP Chapters. However, a reservation does not provide protection nearly as strong as an exception or exemption.

The approach taken by Canada is first of all a unilateral declaration of intent. The other TPP Parties have neither acknowledged nor agreed to Canada's reservations. Where the cultural exception is contained in the General Exceptions article, as is the case with CUSFTA and NAFTA, there is mutual agreement to this approach.

Assuming that Canada has filed a comprehensive list of existing measures, these may only be "continued" or promptly "renewed." If a measure is, for any reason, not achieving the policy objective, it cannot be strengthened because this would "decrease the conformity" of the measure and would thus be in violation of TPP.

⁵ [Wilbur Ross says TPP could form 'starting point' for U.S. on revamped NAFTA talks](#), Bloomberg News, May 3, 2017;

There is also a strong assumption in international trade law that all sectors should be liberalized and made to conform fully to the obligations. Where a reservation is taken, it is assumed that standstill and ratchet provisions will apply.⁶ In other words, the Party will not take actions that would make the reserved sector less “trade compliant” and it is understood that ultimately the sector will be liberalized. Canada would thus be under constant pressure to restrict measures implemented under the reservation and, ultimately, to remove it entirely. If it were ever to do so, the sector could never be re-exempted.

2. The CETA Exception is far more effective than the TPP Reservation

There is a very major difference between the approach taken by Canada and the EU in the Comprehensive Economic and Trade Agreement (CETA) and the approach taken in TPP. The chapter exceptions in CETA are underpinned by very strong language in the Preamble confirming the right of the Parties to regulate, including for “the promotion and protection of cultural diversity.” Further, the CETA General Exceptions article provides additional support in Article 28.9: “Parties recall the exceptions applicable to culture as set out in the relevant provisions of Chapters Seven (Subsidies), Eight (Investment), Nine (Cross-Border Trade in Services), Twelve (Domestic Regulation) and Nineteen (Government Procurement).” The Parties have also specifically acknowledged their commitment to the UNESCO Convention.

If Canada were confronted on the use of its cultural reservation in TPP, it would not have any similar strong language to use as a defence for the cultural policy measure being challenged.

3. Limits on TPP Reservations

There are also explicit limits in various TPP provisions on Canada’s right to implement new policies. Thus, we would move from the policy self-censorship approach spawned by NAFTA’s notwithstanding clause, to direct limits on the scope of our cultural policymaking.

In its own Reservation, Canada has preemptively excluded the possibility to implement “discriminatory requirements on services suppliers or investors to make financial contributions for Canadian content development; and measures restricting the access to on-line foreign audiovisual content.” In the Electronic Commerce Chapter, parties have certain rights to impose requirements, but these must not be more onerous for the works or goods from other TPP Parties. Thus, while the CRTC is entirely free under the Broadcasting Act to impose requirements on Over-the-top (OTT) services like Netflix, it could do so in conformity with the TPP only if it applies the same rules to both domestic and foreign OTT services. But, discriminatory requirements may be the most appropriate policy mechanism to address the challenge in certain instances.

CONCLUSION

Since their election in 2015, the prime minister and several cabinet colleagues have talked a great deal about “gold-standard” and “progressive” trade agreements.

⁶ [The TPP and Cultural Diversity](#) (pg. 11 & 15), CCPA, Alexandre L. Maltais, March 2016;

Where Canada is negotiating with the United States, either alone or in a partnership, or with any other state that is not a signatory to the UNESCO *Convention on the protection and promotion of the diversity of cultural expressions*, it is essential to have a comprehensive exemption of the cultural sector from the trade agreement. This is the only way to protect Canada's scope to implement, maintain and adapt the policies needed to ensure Canadian content can thrive in the digital era.

To make NAFTA a "gold-standard" and "progressive" agreement, with respect to culture, requires these steps:

- Maintain the cultural exemption;
- Strengthen NAFTA by changing the definition of cultural industries. This should be done by putting a focus on the artist and the creative work that provides the cultural content produced and distributed by the cultural industries;
- Fully secure Canada's policymaking space by eliminating the "notwithstanding" clause that authorizes retaliation against measures "that would have been inconsistent with the agreement" if not for the exemption.

July 17

ADDENDUM

July 18, 2017

Last evening, the Office of the United States Trade Representative tabled the *Summary of Objectives for the NAFTA Renegotiation*. A cursory review of the 18-page, point-form document reveals the following potential implications for the cultural sector.

1. Trade in Services

The U.S. will seek “Rules that apply to all services sectors, including rules that prohibit: Discrimination against foreign services suppliers; Restrictions on the number of services suppliers in the market...” The U.S. document further states that “Where any exceptions from core principles are needed, the negotiation, on a negative list basis, of the narrowest possible exceptions, with the least possible impact on U.S. firms.”

If there is no general exception for cultural industries, this potentially affects all cultural services, including audiovisual services, broadcasting, publishing, music, and visual and performing arts. The U.S. is positioned to seek the elimination of Canada’s general exception for cultural industries and to replace it with a narrow exception that would be limited to existing media and strictly-specified existing measures. If they succeed, this would severely restrict future policy options in a sector that is constantly changing. **ACTRA would vigorously oppose the removal from NAFTA of Canada’s general exception for cultural industries.**

2. Digital Trade in Goods and Services

The U.S. seeks to “Ensure non-discriminatory treatment of digital products transmitted electronically and guarantee that these products will not face government-sanctioned discrimination based on the nationality or territory in which the product is produced.”

As anticipated, the U.S. is looking to transpose the Trans-Pacific Partnership digital trade provisions into NAFTA. ACTRA’s submission on TPP analyzes what this would mean. While Canada would retain the ability to impose requirements, including content quotas, mandatory contributions to Canadian production, or tax measures, on Over-the-top services like Netflix, it could do so only if it applies the same rules to both domestic and foreign OTT services. But, discriminatory requirements may be the most appropriate policy mechanism to address a particular challenge. **ACTRA thus opposes any limitation on Canada’s right to impose discriminatory measures on foreign cultural products and service providers entering Canada digitally, since such policies may be the most effective and fair in the circumstances.**

3. Investment

The U.S. will seek to “Establish rules that reduce or eliminate barriers to U.S. investment in all sectors in the NAFTA countries.”

Without a general cultural exception, this would include foreign ownership limits Canada maintains in broadcasting, cable television, film distribution, telecommunications and book

publishing. While ownership limits in certain areas may no longer be relevant, in others, such as broadcasting and cable, these remain important to achieving objectives related to the production and distribution of Canadian content.

4. State-owned Enterprises

The U.S. seeks to “Ensure that SOEs accord non-discriminatory treatment with respect to purchase and sale of goods and services” and further to “Ensure that SOEs act in accordance with commercial considerations with respect to such purchases and sales.”

The Canadian Broadcasting Corporation is an SOE. Appropriately, it discriminates in favour of Canadian producers and Canadian content productions, and does not act solely “in accordance with commercial considerations.” Rather, the *Broadcasting Act* provides a wide range of objectives for CBC programming, which “informs, enlightens and entertains.” These include that it be “predominantly and distinctively Canadian,” “reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,” “actively contribute to the flow and exchange of cultural expression,” and “reflect the multicultural and multiracial nature of Canada....” **Any provision related to State-owned Enterprises must be subject to Canada’s cultural exception and must thus exclude the CBC and other cultural agencies maintained by federal, provincial and municipal governments.**

5. In its objectives for General Provisions, the U.S. does not acknowledge Canada’s general exception for cultural industries.

ACTRA reiterates that NAFTA renegotiation must achieve the following objectives:

- Maintain the cultural exemption.
- Strengthen it by changing the definition of cultural industries. This should be done by putting a focus on the artist and the creative work that provides the cultural content that is produced and distributed by the cultural industries.
- Secure fully our policymaking space by eliminating the “notwithstanding” clause which authorizes retaliation against measures “that would have been inconsistent with the agreement” if not for the exemption.