

# Intelligence MEMOS



From: Konrad von Finckenstein  
To: Bill Morneau, Minister of Finance  
Date: November 28, 2017  
Re: **IT IS LONG PAST TIME TO ALIGN THE GST WITH OUR CULTURAL TRADE POLICIES**

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It is a longstanding aim of Canadian government policy to protect cultural industries from being overwhelmed by foreign, particularly American, content.

Cultural industries were first defined in the first Free Trade Agreement as:

*an enterprise engaged in any of the following activities:*

- a) *the publication, distribution, or sale of books.... 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....*

This definition was carried forward into NAFTA and our new agreement with the European Union. Both agreements contain special provisions for cultural industries that essentially make them exempt from national treatment obligations.

In today's digital age, cultural content is increasingly delivered via the internet. The tax treatment of digital imports of e-books, films or television, however, does not protect our cultural industries.

Take the example of an Ontario subscriber. Such a subscriber to Netflix or Amazon Prime pays no HST. But if he or she selects a Canadian variant, be it Bell's Crave TV or Videotron's Illico, they pay the full HST.

The treatment for e-books is similar. An e-book from Amazon is delivered free of HST while an e-book from Kobo, attracts not HST but only GST.

One might well ask what is going on. After all, the official policy is to protect and promote Canadian culture. Books and films are defined in the cultural provisions of our trade agreements and we have gone to great lengths to protect them. Yet our commodity tax regime does the opposite; it actually favours digital foreign providers of films, videos and e-books. The technical explanation is quite simple.

Foreign video streaming services such as Netflix and Amazon Prime are not carrying on business in Canada. Consequently if a consumer subscribes to Netflix or Amazon Prime, although the subscriber is the recipient of the supply, there is no intermediary third party or importer of record that would be required initially to pay HST/GST.

Technically the subscriber should self-declare for HST purposes, but of course no one does. The same rationale applies if one buys an e-book from Amazon. As the C.D. Howe Institute's Rosalie Wyonch [pointed out](#) recently, only 410 returns on "imported taxable supplies" were filed by consumers and small suppliers in 2015.

Crave TV and Illico, being established enterprises doing business in Ontario, are subject to HST

An Ontario seller of e-books sells them subject to HST, but since books are zero rated for PST, the purchaser only pays GST.

The net result of all of this is perverse. Rather than protecting Canadian providers of digitally delivered film, video and books, the Canadian commodity tax system effectively allows the tax free entry of competing foreign digital products.

While a tax on digitally imported film, video or e-books might be unpopular and politically difficult to enact, the present situation cannot rationally be defended. The current GST regime undermines our trade and cultural policies.

It is high time we reform our commodity tax regime so that it makes sense in the digital age. Ideally, it would protect our cultural industries; at a minimum it should not favour foreign providers of cultural goods over Canadian ones.

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