

Inquiry into the Australian Government's approach to negotiating trade and investment agreements



Submission of the Media Entertainment & Arts Alliance (MEAA)

September 2023

The Media Entertainment & Arts Alliance (MEAA) is the largest and most established union and industry advocate for workers in the creative and cultural industries, representing over 15,000 members. Our members include people working in television, radio, theatre, film, entertainment venues, sporting stadia, journalists, actors, dancers, cartoonists, photographers, and musicians – in fact, everyone who works in the industries that inform or entertain.

MEAA welcomes the opportunity to provide this submission to the Joint Standing Committee on Trade and Investment Growth's Inquiry into the Australian Government's approach to negotiating trade and investment agreements.

There is ample research showing that participation and engagement in arts, culture, media and civic activity is an intrinsic good, and a cultural agenda that recognises the fundamental role of arts, media and culture helps sustain the health and wellbeing of our society.

Australians deserve quality Australian stories that can be seen, heard, read, and consumed by audiences.

This submission will focus on the following part of the inquiry's terms of reference:

The Joint Standing Committee on Trade and Investment Growth shall inquire into and report on the approach adopted by the Australian government when negotiating trade and investment agreements with trading partners, including:

...

(g) The steps taken to ensure agreements protect and advance Australia's cultural interests;

Types of Agreements

MEAA considers that the nation's trade objectives are best achieved in the context of multilateral agreements such as the General Agreement on Trade in Services (GATS) and the General Agreement on Tariffs and Trade (GATT).

MEAA has long considered that multilateralism delivers greater benefits to Australia than those achieved in bilateral trade agreements.

Where the latter are pursued, MEAA prefers positive list agreements (to negative list agreements) as these agreements dramatically reduce the risk of inadvertent consequences.

“Negative” and “Positive” List Agreements

While “positive list” agreements explicitly nominate the sectors and services to be subject to that free trade agreement, in “negative list” agreements the sectors and services not covered must be specifically listed as exemptions.

Therefore, in a negative list agreement, sectors and services are by default subject to the free trade agreement unless they are specifically included in a list of exemptions.

This means new delivery platforms not invented at the time the negotiations were undertaken can nonetheless be caught by an agreement’s provisions. In a rapidly changing technological environment, it is increasingly difficult to predict the changes we will see in just a few years’ time, let alone the medium to long term.

Where the Government does pursue negative list agreements, such agreements must incorporate a clearly drafted broad based cultural exception or reservation that:

- is technology neutral;
- allows for the Government to introduce protective legislation in the future to accommodate technologies including delivery platforms under development or not yet invented;
- allows for the Government to make protective strategic interventions at any time and in any manner it believes appropriate to maintain, strengthen or enhance development, production and/or the delivery and distribution of any sector or aspect of the cultural industries;
- is self-judging and not subject to dispute;
- is not subject to standstill, roll-back, snap-back or ratchet provisions, and
- is able to override all provisions in the entirety of the agreement including any commitments that might be made in respect of e-commerce.

Additionally, in such negative list agreements, there must be a clearly drafted immigration exception or reservation that:

- incorporates current restrictions on temporary business entry in the entertainment and cultural sectors;
- allows for such changes as the Government may consider necessary now and in the future;
- is self-judging and not subject to dispute;
- is not subject to standstill, roll-back, snap-back or ratchet provisions;
- incorporates protection, enhancement and enforcement of labour standards; and
- makes unlawful the use of reductions in domestic health, safety and labour standards to attract overseas investment.

Australia United States Free Trade Agreement (AUSFTA)

An example of acceptable protections provided to cultural industries is the Singapore Australia Free Trade Agreement (SAFTA), in which Annex II reservations in respect of Australia's cultural sector provided these appropriate protections.

This is to be contrasted with the Australia United States Free Trade Agreement (AUSFTA) wherein a broadly drafted comprehensive cultural exemption or reservation was not negotiated. An outcome of the AUSFTA negotiations was that existing local content rules were exempted from the agreement but frozen at current levels. This means that Australia's local media content quotas cannot be increased above their current level except in limited circumstances. Under Annex I, Australia's existing local content quotas are "bound", and if they are reduced in the future they cannot later be restored to existing levels.

Moreover, under Annex II, future Australian governments are limited in the laws they can introduce for "new media." For example, for multichannel free-to-air commercial TV, Australian content is capped at 55% on no more than two channels, or 20% of the total number of channels made available by a broadcaster, up to only three channels. The expenditure requirement on Australian content for subscription television is limited to 10% with requirements for consultation before going beyond 10% "with any affected parties including the United States".

The AUSFTA places significant restrictions on the regulation of streaming and other new services which have developed since the agreement was negotiated in 2004, and the Australian Government should seek to renegotiate them to ensure that both current and future local content requirements and subsidies for local cultural industries are completely exempted.

This is particularly relevant in light of the Australian Government's commitment to developing local content quotas for streaming services.

The importance of Australia's cultural industries to the nation's identity

As Australians we are the inheritors of a unique natural environment and custodians of a culture of storytelling that is tens of thousands of years old. The nation has been further shaped by the contribution of immigrants from across the globe.

This unique Australian identity - forged by First Nations peoples - is worth protecting.

The fundamental sovereign right of our government to make laws in the national interest should not lightly be forfeited. In our cultural industries, the right to implement regulations without constraint has been relevant to the development of our national identity, for instance the ability to mandate local content in transmission quotas for commercial television.

Government has a critical role in setting the tone and scope of our national cultural ambitions. The Australian Government must foster the growth of our arts sector and shape both our cultural and economic future through the recognition and protection of our cultural industry in free trade agreements.

Consistent with long-standing policy in respect of the GATS, Australia's position in all multilateral, plurilateral, regional and bilateral trade agreements should continue to be one wherein no commitments are made that might in any way constrain the Government's ability to give effect to its social and cultural objectives in respect of Australia's cultural industries now and in the future.

Agreement Making Process

The Department of Foreign Affairs and Trade (DFAT) has the primary carriage for negotiation of free trade agreements.

While DFAT's processes provide for input from stakeholders on agreements, draft text is not released, and stakeholders are reliant on generalisations about the negotiations rather than the detail.

Thus, the outcome of the negotiations is not known until the free trade agreement in question is concluded, agreed by Cabinet, signed and tabled in Parliament. Only then is it made public and referred to the Joint Standing Committee on Treaties (JSCOT). Clearly this is too late for genuine public scrutiny and increases the pressure for the government of the day to ratify the agreement. Consequently, JSCOT usually limits itself to making recommendations about future free trade agreements.

It is essential that the Government ensure the process leading up to the outcome of negotiations is transparent, and key stakeholders are provided with genuine capacity to inform the agreements being negotiated.

MEAA's view is that key union, industry and civil society stakeholders should be consulted on any free trade agreement that effects those organisations' members as a matter of course. Any agreement which has an effect – direct or indirect – on the cultural industries, for example, should involve MEAA, and such consultations should not be subject to Chatham House Rules.

Moreover, draft text should be made public prior to it being tabled in Parliament.

See the Australian Council of Trade Unions (ACTU) submission for more information on the importance of a transparent, consultative and democratically accountable process for negotiating free trade agreements.

Labour Rights Principles

It is important that any free trade agreement entered into binds parties to the core labour standards set by the International Labor Organisation, as well as including non-compliance by a party with the stated objective, principles and rights within the scope of the dispute settlement provisions of the agreement.

It is also important that parties are not able to revise their respective labour laws in a manner that weakens or reduces their adherence to the internationally recognised labour principles.

See the ACTU submission for more information on the importance of enforceable labour standards in trade agreements.

Conclusion

This inquiry provides the Australian Government with the opportunity to ensure that our cultural industries are protected and the ability to tell our own stories enhanced through a comprehensive cultural exclusion when negotiating all free trade agreements.

MEAA calls on the Government to take up this opportunity.