

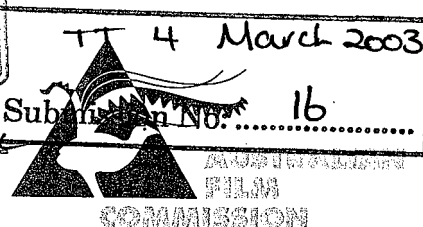
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Submission No: 16

BY: Gillian Gould

From the Office of the Chief Executive



17 April 2003

Ms Gillian Gould
Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

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Dear Ms Gould,

Singapore-Australia Free Trade Agreement (SAFTA)

The Australian Film Commission is the Commonwealth's primary development agency for the film, television and interactive media production industries in Australia.

Professional and industry development are supported through a range of measures, including:

- funding project development through script and other pre-production assistance and funding production of low budget feature films, documentaries, animation, experimental and short drama programs, and digital multimedia;
- marketing support and advice and promotion of Australian film and television internationally;
- infrastructure support to industry organisations;
- support for digital and interactive media projects and cultural development; Indigenous film and television development including support for Indigenous program makers;
- monitoring film, television, interactive and digital media industry performance and providing information, analysis and research;
- policy development;
- administering Australia's Official Co-production Program.

The AFC has a long-standing interest in the outcome of bilateral and multilateral trade negotiations, particularly as they affect trade in audiovisual services and the development of the creative industries in Australia. Over many years the AFC has participated fully in the consultative process undertaken by DFAT on trade negotiations and provided DFAT with expert advice. The Chair of the AFC, Ms Maureen Barron, is a member of the Trade Minister's WTO Advisory Group.

We attach for the information of the Committee a copy of the AFC's recent response to the Senate Committee on Foreign Affairs, Defence and Trade's inquiry into the Australian government's White Paper *'Advancing the National Interest'*.

As you will see from that submission, a key issue for the AFC and for the audiovisual sector in Australia is the treatment of cultural services and government support for cultural services in trade negotiations and agreements. The basic argument is that while free trade is an essential objective so too is the ability of nations to enact cultural policy. Therefore trade agreements should not be constructed in a way that constrains the freedom of nations to act in any manner they consider necessary to support their cultural industries.

In this regard the SAFTA provides a model for the treatment of culture in trade agreements and represents, in our view, a new international standard.

Like most bilateral trade agreements the SAFTA is what is known as a 'negative list' agreement. That is, the agreement is constructed so that all goods and services will be subject to market access liberalisation and the removal of national treatment restrictions, unless parties take reservations for particular goods and services.

There are examples of other bilateral or regional agreements where attempts have been made to exclude cultural measures from the scope of the agreement. In particular, the Canada–USA Free Trade Agreement of 1989 and the North American Free Trade Agreement. Both these agreements, at the instigation of Canada, contain exceptions or reservations for 'cultural industries'. However, in our view, these agreements do not provide useful models for Australia because the definition of 'cultural industries' is too narrow and there is provision for the USA to take compensatory trade measures for any acts by Canada pursuant to the exception.

Having learned from these examples and from the failure of Australia to take out a reservation for culture in the Australia New Zealand Closer Economic Relations Trade Agreement, the AFC was instrumental in advising DFAT and the negotiators in the SAFTA negotiations on the reservation Australia should seek to achieve.

Consequently, in the SAFTA, Australia obtained the following reservation for cultural industries:

Australia reserves the right to adopt or maintain any measure relating to:

the creative arts⁽¹⁾, cultural heritage⁽²⁾ and other cultural industries, including audio-visual services, entertainment services and libraries, archives, museums and other cultural services;

broadcasting and audio-visual services, including measures relating to planning, licensing and spectrum management, and including: services offered in Australia; international services originating from Australia.

- (1) Creative arts include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend artform divisions.
- (2) Cultural heritage includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

This represents one of the most comprehensive cultural reservations in any trade agreement so far negotiated and should be a model for the negotiation of the USA-Australia trade agreement. That is our current submission to DFAT in relation to those negotiations.

The stated objective of the government in trade negotiations is to preserve 'its ability to regulate in relation to social and cultural objectives'. It is our submission to this Committee that in the context of the SAFTA, the above reservation achieves that objective. Accordingly, we commend this text to the Committee for its endorsement.

Yours sincerely



KIM DALTON
Chief Executive
AUSTRALIAN FILM COMMISSION

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