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12 April, 2004

Ms Julia Morris
Inquiry Secretary
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600

Dear Ms Morris,

PROPOSED AUSTRALIA – UNITED STATES FREE TRADE AGREEMENT

Thank you for your letter of 11 March, 2004 inviting a submission from Friends of the ABC for the consideration of the Commonwealth Parliament's Treaties Committee.

Our submission, which is sent on behalf of Friends of the ABC in the ACT, NSW, South Australia, Western Australia and the Northern Territory, is being transmitted by e-mail.

Yours sincerely

Gary Cook
President
Friends of the ABC (NSW) Inc.

SUBMISSION ON THE AUSTRALIA – UNITED STATES FREE TRADE AGREEMENT

The Friends of the ABC welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties in respect of the Proposed Australia-United States Free Trade Agreement.

The scope of this submission is confined to only one of the very wide range of issues covered in the proposed Agreement, and that is its impact on the preservation of Australia's cultural identity. The Friends of the ABC believe that it is crucial for Australians to see our national character reflected in the performing and visual arts. It is through locally developed literature, film, television, radio and stage performances, directed at different audiences, in diverse regions, and from different backgrounds, that a sense of what it is to be Australian develops.

THE ABC – PROGRAMMING TO CONTRIBUTE TO A SENSE OF NATIONAL IDENTITY.

The ABC is required under the ABC Act to “encourage and promote the musical, dramatic and other performing arts in Australia”¹. The ABC is also required to broadcast programs “ that contribute to a sense of national identity and inform and entertain and reflect the cultural diversity of the Australian community”².

As a producer and co-producer of audio-visual products the ABC is affected by this Agreement. It is also affected as a purchaser of such material. Apart from the material which the ABC makes itself, its ability to reflect the cultural diversity of Australia could be severely compromised if independent film, television and radio production in Australia were to be adversely affected by the Agreement.

NATIONAL IDENTITY – LOCAL CONTENT REGULATION

Of the many mechanisms used to preserve our national identity, local content regulation is only one, but it is one which Friends of the ABC consider to be adversely affected by the provisions of the proposed Agreement.

According to the DFAT Backgrounder, Australia has retained its current requirement for local content, and has ensured that it has the freedom to regulate for local content in the future – for digital multi-channelling on free-to-air TV, for subscription TV, and for 'new media' or interactive audio and/or video services.³

Standing still – or going backwards

¹ *Australian Broadcasting Corporation Act 1983, s6 (1) (c)*

² *ibid. s6 (1) (a)(I)*

³ <http://www.dfat.gov.au/trade/negotiations/us.fta/backgrounder/audiovisual.html> p. 1

It is under Annex I that existing local content quotas are 'bound' in a 'standstill' arrangement which means that under the Agreement they remain as at present. They cannot, at any time in the future, be increased; and if any future government does reduce the quotas they cannot be raised to their former levels.

From a Government which, during the course of the negotiations, repeatedly assured the public that it would allow nothing which would detract from its ability to legislate in areas of social policy, this is not good enough. This Agreement would make it impossible for any future government to make any change to local content rules, except downwards. Furthermore an action of that kind would in turn bind governments thereafter to local content quotas no higher than that level.

The future – a restricted one

Even more worrying is the proposal for future regulation. The DFAT Backgrounder states that the Agreement has ensured 'flexibility' – but for a future which will look no different from the present broadcasting world.⁴

- Multi-channelling

There will be a required (specified) local content quota in multi-channelled free-to-air commercial TV, but it will not provide a greater percentage (as distinct from amount) of local content, as the government claims. (If a multi-channelling broadcaster has 3 channels, then 2 of them must conform to the local content quota – which is the same percentage as now – but if the broadcaster has 15 channels then no more than 3 are required to conform to the local content requirements, therefore less than now).

But perhaps in the future, a 55% quota will look very small. If so, there will be no possibility of increasing it. Again, where is the government's ability to legislate in areas of social policy?

- Subscription TV

In the case of subscription TV the Agreement requires a (specified) percentage of expenditure on local content programming, potentially higher in the case of drama channels than in others but, again, fixed (10% up to 20% of expenditure).

- 'New media' (interactive audio and/or video services)

This is a particularly negatively-framed provision of the Agreement: it aims to ensure that Australian content is 'not unreasonably denied' to Australian consumers of these services. To demonstrate this the Government has to find that the Australian content is not readily available, and must do so in a way which according to the Agreement is 'no more trade restrictive than necessary'⁵.

This is a particularly timid provision when the future of broadcasting is such an unknown quantity. The only certainty is that it will be a quite different broadcasting environment to today's and that it is a near future, not a distant prospect. To close off options now to a future which is impossible to predict is,

⁴ http://www.dfat.gov.au/trade/negotiations/us_fta/backgrounder/audiovisual.html page 4

⁵ loc.cit

as Australian Film Commission Chief Executive, Kim Dalton, suggested, “like having an inquiry about radio in 1950, agreeing to lock off on certain conditions concerning radio and not being aware of a thing called television which was about to burst on to the scene”⁶.

**THE ABC – AND THE FUTURE
OF PUBLIC BROADCASTING**

Because the Agreement has a negative list structure for services, all policies not specifically listed as outside the Agreement can be affected by its provisions.

Public broadcasting as such is not excluded from the Agreement. It is currently protected in the Agreement by the general exclusion of subsidies and grants, and also, probably, because it is regarded as a public service. However, it is already possible that the regulation of public broadcasting could be affected by the agreement because of the definition of what constitutes a public service – which excludes services provided on a commercial basis or in competition with other service providers.

In the changing world of interactive audio and/or visual services the ABC has begun to position itself well, notably with its highly-regarded, and much visited, ABC Online, as well as the now-defunct digital ‘Kids TV’ and ‘FlyTV’. In the relatively unknown future of borderless digital broadcasting, it could well be that public broadcasters strain the existing definition of ‘public service’ as used by WTO member states. Of course they may not, but again it is important to leave open the possibilities which could be created in the future.

By virtue of its very existence as a public broadcaster, as well as through its programming policies, the ABC itself fosters Australian identity

It is therefore recommended that:

That the United States/Australia Free Trade Agreement be amended to specify the exclusion of

- **local content regulation, and of**
- **public broadcasting.**

⁶ The Senate Foreign Affairs, Defence and Trade References Committee Report, *Voting on trade* p. 128