

**SENATE SELECT COMMITTEE ON THE AUSTRALIA US FREE TRADE
AGREEMENT**

SUPPLEMENTARY SUBMISSION

**AUSTRALIAN SCREEN DIRECTORS ASSOCIATION
AUSTRALIAN WRITERS GUILD
SCREEN PRODUCERS ASSOCIATION OF AUSTRALIA**

MAY 2004

Introduction

This supplementary submission is in response to the question put to the organizations at their appearance before the Committee on 4 May by the Chair of the Committee, Senator Cook:

*...could you provide us with the changes to the text you would see as necessary to meet the concerns that you have expressed to us?.*¹

Further changes to the text

Our organisations have given much consideration to what other changes could be made to the text and wish to reiterate the view that the agreement is fundamentally flawed, in that it does not to maintain the integrity of Australia's cultural sovereignty.

The audiovisual industry has consistently argued for a broad cultural exemption to the application of the free trade principles in bilateral and multilateral trade agreements. Australian 'culture' defined broadly enough for it to apply to culture wherever it existed or is delivered, in current, emerging or future technologies or the approach taken in the Singapore Australia Free Trade Agreement (SAFTA).

This exemption reserved Australia's right to adopt or maintain any measures relating to:

the creative arts, cultural heritage and other cultural industries, including audiovisual services, entertainment services and libraries, archives, museums and other cultural services.

We have always believed that the SAFTA exemption is the best way to proceed for Australia in dealing with the freedom to implement policy for the culture industries, and to ensure that Australian audiences retain the ability to have access to content emanating from their own country, and hence with some resonance with their own experience, and in their own accents. We strongly supported SAFTA because it was consistent with the Government's long-standing approach to maintaining the balance between trade liberalisation and cultural integrity. It is consistent with Australia's policy in the WTO and the multi-lateral stance it has up until now taken on the resolution of this issue.

By acceding to this agreement Australia moves from the consensus position on trade and culture expressed in the WTO, and being further developed by the UNESCO's work to create an international instrument on cultural diversity, to a position on trade and culture that is held by a small group of countries that have entered bi-lateral agreements with the USA. That position could be briefly described as being:

- Opposed to exemptions on culture as a legitimate means of resolving the conflict between trade and cultural policies.

¹ Senator Cook, Draft Committee Hansard, 4 May 2004, p.4

- Supporting limited reservations for tightly defined cultural measures which will be subject to wind back wherever possible.
- Using general investment liberalisation as a means to restrict the ability of governments to put conditions on its support for cultural investment.
- Restricting the ability of government owned cultural organisations to provide services that might also be provided by the private sector.
- Supportive of E-commerce as the long term site of liberalisation of trade in new media and removal of barriers to trade that have cultural policy foundations.

Despite what the Government may think it has achieved by its reservations in this Agreement, the decision to move away from a SAFTA exemption has compromised its ability to act in any future negotiations on bilateral, regional or multilateral agreements.

This decision was made with no consultation with the industry. In every discussion with the negotiators, the SAFTA approach was always discussed as the Government's position, albeit with DFAT considering different concessions and limitations to the overall exemption.

The Australian industry recognised quite early on in the negotiations that Australia was not going to hold the line at SAFTA, given the ambitions of the US Trade Representative – ambitions that had little to do with US penetration of the Australian audiovisual market and more to do with precedent setting for other trade agreements. We acknowledged that it was likely that some concessions would have to be made.

Given this reality, we outlined what we saw as a bottom line position for the industry, with a number of concessions which we believed would give adequate 'precedent' to the US industry but also maintain Australia's overall flexibility in its ability to set cultural policy. Central to this bottom line was that Australia must maintain an overall cultural "exemption" but that this exemption would be limited by stipulating regulatory 'caps' on a number of existing media.

This position was expressed to the Prime Minister by the industry during a meeting held towards the end of last year.

Take it or leave it

The US approach to this agreement of 'take it all or leave it' means that we have to reluctantly reject the current text because it is such a significant departure by Australia from the logic and sense of the SAFTA exemption.

We wish to make abundantly clear that we do not take this position because of any fundamental opposition to a trade agreement with the USA. Our position has always been that the outcome of any agreement had to be in the national interest of Australia. We do not take issue with the US as a nation, but what we see as its flawed approach

to resolving the inherent conflict between trade liberalisation and national freedom to implement cultural policy.

The cultural policies of the Australian government have brought enormous benefit to Australia through the music, literature, theatre, film and other art forms they have helped nurture and support.

What is at stake in this agreement is whether Australia will continue to have the ability to determine its own cultural policy or whether that freedom is to be constrained or sacrificed to the pursuit of a larger free trade agenda. Cultural policy should not be made subservient to trade liberalisation.

Changes to the text since 4 May

Within the context of a ‘reservations’ based approach to dealing with the problem of retaining Australia’s ability to implement its cultural policy we note that Australia and the USA signed a new full text of the agreement in Washington on 18 May with object of facilitating the consideration of the agreement by the US Congress.

The text now contains a substantive amendment to Annex 2 in relation to Audiovisual Services. The text now states that:

Australia reserves the right to adopt or maintain:

(g) Subsidies or grants

Subsidies or grants for investment in Australian cultural activity where eligibility for the subsidy or grant is subject to local content or production requirements.

This entry does not apply to foreign investment restrictions in the broadcasting and audiovisual services sector.

Existing Measures:

Broadcasting Services Act 1992

Radiocommunications Act 1992

Income Tax Assessment Act 1936

Income Tax Assessment Act 1997

Australian Film Commission Act 1975

Broadcasting Services (Australian Content) Standard 1999

Television Program Standard 23 – Australian Content in Advertising

Commercial Radio Codes of Practice and Guidelines

Community Broadcasting Codes of Practice

This has replaced the earlier Annex 2.7(h) relating to taxation concessions for investment in Australian cultural activity.

We assume that this is intended to meet the concern raised in our submission about the effect of the earlier text upon Australia's film assistance arrangements. Particularly the effect of the performance requirement in 11.9 of the Investment Chapter upon Australia's ability to require Australian content performance requirements as a condition of government grants, subsidies or investment in cultural production.

We would like to point out again that there was no consultation with our organizations by DFAT on the drafting of this reservation. Our initial examination of the new text suggests that it may only solve part of the problem that we highlighted, particularly in relation to the wording *Subsidies or grants for investment*, which lacks clarity of meaning in the context of Australia's cultural support mechanism. What if the subsidy or grant is not for investment purposes; is that not intended to be covered by the reservation?